

**PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT
CITY HALL
260 High Street, Perth Amboy, NJ 08861
(732) 442-6421**

**PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT
PUBLIC MEETING**

Pursuant to the Open Public Meetings Act, please note that a regular public meeting has been scheduled for the Perth Amboy Business Improvement District to take place on **Tuesday, September 14, 2021 at 4:00 pm** at City Hall Council Chambers located at 260 High Street.

Notice of this meeting has been given to the Star Ledger, the Home News Tribune, the Amboy Guardian, published on the City's website, BID board webpage, provided to the City Clerk's office for public posting (bulletin board), released via Constant Contact email service and posted at the side entrance of City Hall.

AGENDA

I. Salute to the Flag

II. Roll Call

Name	Present	Absent	Excused
Antonio Abreu			
Fausto Diaz			
Iris Diaz			
Mayor Helmin Caba			
Sergio Diaz			
Lisett Lebron			
Asim Malik			
Reyes Ortega			
Samuel Quezada			
<i>Mayor's Designee*</i>			
Barry Rosengarten			
Elizabeth Sanchez			
James Snyder			
Melvin Rodriguez			

I. **Approval of Amended Minutes**

July 13, 2021

Motion _____
Second _____

II. **Approval of Bill Lists**

Reyes Ortega, Treasurer

Special August Bill List \$38,946.52

Motion _____
Second _____

September Bill List \$19,588.89

Motion _____
Second _____

I. **Chairman's Report**

Barry Rosengarten, Chairman

- a. BID Updates
 - 1) Public Presentation for BID Expansion
 - 2) Closed Litigation- Judge's Opinion in Favor of the BID
 - 3) By-Law Committee Appointments
- b. Downtown Improvements
 - 1) Downtown LED Lights
 - 2) Bike Share Program
 - 3) "How to Apply for Grants" Seminar
- c. Match Funding for NPP Projects
 - 1) NPP Project Support for Tree Grate Removal
 - 2) Perth Amboy Eats Webpage- BID Funding

II. **Manager's Report**

Noelia Colon, Executive Director

- a. Projects and Initiatives
 - 1) NJEDA Grant Programs
 - 1. Main Street Recovery Grant
 - 2. Tropical Storm Grant
 - 2) Business Registration Program
 - 3) Upcoming BID Events
 - 1. Perth Amboy Eats, Restaurant Tour- 10/16/2021
 - 2. Classic Car Show- 10/23/2021

III. **Committee Report**

None

IV. **Old Business:**

None

V. **New Business:**

None

**VI. Public Portion:
Motion to open the public portion:**

Motion _____
Second _____

Motion to close the public portion:

Motion _____
Second _____

**VII. Executive Session:
a. Resolution 06-09/2021- Pending and closed litigation matters**

No action is anticipated to take place after the executive session.

VIII. Motion to open Executive Session:

Motion _____
Second _____

IX. Adjourn:

Motion _____
Second _____

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CITY HALL
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(732) 442-6421**

**PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT
PUBLIC MEETING**

Pursuant to the Open Public Meetings Act, please note that a regular public meeting has been scheduled for the Perth Amboy Business Improvement District to take place on **Tuesday, July 13, 2021 at 4:00 pm** over Zoom online conference platform.

Notice of this meeting has been given to the Star Ledger, the Home News Tribune, the Amboy Guardian, published on the City's website, BID board webpage, provided to the City Clerk's office for public posting (bulletin board), released via Constant Contact email service and posted on the side entrance (currently the main entrance) of City Hall.

Online Link:

<https://zoom.us/j/99742816323?pwd=Y2NPMFZuMHNTYThMTzdtV2NiRk1DUT09>

By Phone: +1 646 558 8656 US (New York)

Meeting ID: 997 4281 6323; **Passcode:** 08861

Public portion has been set for a maximum time of 5 minutes per speaker.

MINUTES

I. Salute to the Flag

II. Roll Call

Name	Present	Absent	Excused
Antonio Abreu	x		
Fausto Diaz	x		
Iris Diaz		x	
Mayor Helmin Caba	x		
Sergio Diaz	x		
Lisett Lebron	x		
Asim Malik	x		
Reyes Ortega	x		
Samuel Quezada	x		
<i>Mayor's Designee*</i>			
Barry Rosengarten	x		

Elizabeth Sanchez			x
James Snyder			x
Melvin Rodriguez	X (Joined at 4:38PM)		

I. Approval of Amended Minutes

June 8, 2021

Motion A. Malik
 Second Mayor Caba
 All in Favor

II. Approval of Bill list

Reyes Ortega, Treasurer

Motion A. Abreu
 Second A. Malik
 All in Favor

I. Chairman's Report

Barry Rosengarten, Chairman

a. BID Updates

- 1) Wilma Matey Resignation
- 2) *Chairman Rosengarten stated that Wilma Matey's resignation is effective as of June 8th and thanked her for her years of services invested in the BID.*

b. Downtown/BID Improvements

- 1) Replacement of the Planters --
Chairman Rosengarten- reviewed quotes provided for the both the hanging planters and the planters, Earth Planter are watered once weekly and self-water to reduce labor costs by a minimum of 50%, along with reduce water and fertilizer waste up to 80%. The purchase of the new planter or hanging basket will be purchased from unexpended landscaping services for 2021 and the remainder from surplus. Motion: To purchase EarthPlanter planters or hanging baskets in an amount not to exceed \$25,000.

Motion L. Lebron
 Second S. Diaz
 All in Favor

- 2) Light pole Banners (Waterfront) --
Chairman Rosengarten stated that the BID would like to replace the light pole banner throughout the district and this includes a section of the marina. We have a sample of nautical theme of international code flags for this area for roughly 24 light poles. Please refer to you packets to review the quote and samples and other designs are possible. Motion to purchase the recommended samples for the waterfront marina that is in the BID area.

Motion S. Diaz
Second Mayor Caba
All in Favor

c. Dining Guide

Chairman Rosengarten stated that Bob Rinklin will provide an update on the final version of the dining guide, which we will provide electronically on the City's website, our BID page and in print form once finalized.

II. **Manager's Report**

Noelia Colon, Executive Director

a. Projects and Initiatives

- 1) NJEDA Loan Program Announcement- *information provided via Constant Contact to the business community.*
- 2) Update on Bench Installation- *the assembled benches will be delivered by the end of August, according to the vendor.*
- 3) NPP/BID Funds:
 1. Art Mural Expansion- *86 Smith Street- mural has been completed and was supported using Art-n-Flow, BID funds at a total of \$1,800.*
 2. 2nd Art Mural in Downtown Area- *OECD and BID are seeking artists to respond to the call for a mural to be painted on a property located near the train station. The BID will also support with funds, as encumbered last July.*
- 4) Upcoming Business Meeting- *7/21/2021, the Neighborhood Business Meeting held for business owners to meet with Mayor and City directors to address matters that are important to them. Meeting will take place at Alameda Care Center at 303 Elm Street. Flyer was released to the business community via Constant Contact.*
- 5) Business Communications
 1. Façade Grant Mailer- *Mailed to all property owners in the BID area, (Tax Assessor's Office provided mailing list) to encourage applicants.*
 2. Business Contact Form- *With the assistance of some summer support, the UEZ/BID were able to assist in retrieving the contact information from the business community.*

III. **Committee Report**

None

IV. **Old Business**

None

V. **New Business:**

None

VI. **Public Portion:**

Motion to open the public portion:

Motion L. Lebron
Second S. Diaz
All in Favor

Members of the Public:

1. Councilman "BJ" Torres - Cannabis endorsed by other communities such as Downtown Maplewood
2. Fernando Gonzalez shared his request regarding the lights in the downtown area to be upgraded.

Motion to close the public portion:

Motion L. Lebron
Second S. Diaz
All in Favor

VII. **Executive Session:**

a. Resolution 05-07/2021- Legal Advice Pertaining to Administrative Matters, Misc. Organizational Policies and Annual Meeting.
Review of legal aspects of organizational policies (conflict of interest policy), review of legal aspects of BID Expansion and review of legal aspects of the BID election.

No action is anticipated to take place after the executive session.

VIII. **Motion to open Executive Session:**

Motion L. Lebron
Second S. Diaz
All in Favor

IX. **Adjourn:**

Motion S. Diaz
Second L. Lebron
All in Favor

**CITY OF PERTH AMBOY
BUSINESS IMPROVEMENT DISTRICT**

**AUGUST 2021
AS OF 7/9/2021
SPECIAL BILL LIST**

Name	Date	Description	Open Balance
Veronica Pacheco	7/9/2021	Vendor Services: July 1-July 30	\$ 975.00
		Total	\$ 975.00
Verizon	7/24/2021	BID Phone payment; June 25- July 24	\$ 121.89
		Total	\$ 121.89
Printing Copy Center	7/30/2021	Business Contact Form Door Hangers	\$ 200.00
		Total	\$ 200.00
City of Perth Amboy	8/2/2021	3rd Quarter payment for Reimbursement for BID ED salary	\$ 26,110.72
		Total	\$ 26,110.72
City of Perth Amboy	8/2/2021	2nd Payment for Repairs & Maintenance to Mini-vacs and Sweepers	\$ 2,269.20
		Total	\$ 2,269.20
City of Perth Amboy	8/2/2021	3rd Quarter payment for Reimbursement for Street Sweeper salary	\$ 8,850.00
		Total	\$ 8,850.00
Essential Communications	8/2/2021	PR Services for July 2021	\$ 200.00
		Total	\$ 200.00
Village Office Supply	8/3/2021	Office Supply Order	\$ 166.71
		Total	\$ 166.71
United States Postal Service	8/5/2021	Stamps for BID Postcard Mailing	\$ 53.00
		Total	\$ 53.00
		TOTAL	\$ 38,946.52

City of Perth Amboy
Business Improvement District

Total Bill List	\$ 38,946.52
Date	

NAME	APPROVED
Antonio Abreu	
Lisett Lebron	
Asim Malik	
Sergio Diaz	
Mayor Helmin Caba	
Fausto Diaz	
Iris Diaz	
Reyes Ortega	
Mayor's Designee	
Samuel Quezada	
Melvin Rodriguez	
Elizabeth Sanchez	
James Snyder	
Chairman Rosengarten	

Motion:

Second:

Veronica Pacheco
441 Penn Street
Perth Amboy, NJ 08861

Invoice

Invoice # 0821
Date: July 9, 2021

BILL TO:
PABID
260 High Street
Perth Amboy, NJ 08861

DESCRIPTION	DATE(S)	UNIT	RATE	AMOUNT
Vendor Services (Clerical)	8/1/2021-8/31/2021	99	\$15.00	\$1475.00
			TOTAL	\$1475.00

Veronica Pacheco
441 Penn Street
Perth Amboy, NJ 08861

Invoice

Invoice # 0721
Date: July 9, 2021

BILL TO:
PABID
260 High Street
Perth Amboy, NJ 08861

DESCRIPTION	DATE(S)	UNIT	RATE	AMOUNT
Vendor Services (Clerical)	7/1/2021-7/9/2021	75	\$13.00	\$975.00
			TOTAL	\$975.00



PO BOX 489
NEWARK, NJ 07101-0489

Manage Your Account	Account Number	Date Due
b2b.verizonwireless.com	342311378-00001	08/16/21
Change your address at http://sso.verizonenterprise.com	Invoice Number	9884850239

Quick Bill Summary

Jun 25 – Jul 24



PERTH AMBOY BUSINESS IMPROV
260 HIGH ST
PERTH AMBOY, NJ 08861-4451

00028805
K107

Previous Balance <i>(see back for details)</i>	\$121.91
Payment – Thank You	-\$121.91
Balance Forward	\$0.00
Monthly Charges	\$70.00
Usage and Purchase Charges	
Voice	\$.00
Messaging	\$.00
Data	\$.00
Equipment Charges	\$47.91
Surcharges and Other Charges & Credits	\$2.67
Taxes, Governmental Surcharges & Fees	\$1.31
Total Current Charges	\$121.89

Total Charges Due by August 16, 2021 \$121.89

Pay from phone #PMT (#768)	Pay on the Web At b2b.verizonwireless.com	Questions: 1.800.922.0204 or *611 from your phone
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PERTH AMBOY BUSINESS IMPROV
260 HIGH ST
PERTH AMBOY, NJ 08861-4451

Bill Date	July 24, 2021
Account Number	342311378-00001
Invoice Number	9884850239

Total Amount Due

Will be submitted to credit card on 08/14/21
DO NOT MAIL PAYMENT

\$121.89

P.O. BOX 408
NEWARK, NJ 07101-0408



98848502390103423113780000100000012189000000121893



Invoice Number 9884950239 Account Number 342311378-00001 Date Due 08/16/21 Page 3 of 6

9884950239 342311378-00001 08/16/21 3 of 6

Overview of Lines

Lines Charges	Page Number	Monthly Charges	Usage and Purchase Charges	Equipment Charges	Surcharges and Other Credits	Taxes, Governmental and Fees	Third-Party Charges (Includes Tax)	Total Charges	Voice Plan Usage	Messaging Usage	Data Usage	Voice Roaming	Messaging Roaming	Data Roaming
732-372-8772 Noelia Colon	4	\$70.00	---	\$47.91	\$2.67	\$1.31	---	\$121.89	18	122	.327GB	---	---	---
Total Current Charges		\$70.00	\$0.00	\$47.91	\$2.67	\$1.31	\$0.00	\$121.89						



Summary for Noelia Colon: 732-372-8772

Your Plan

Business Unlimited Smartphone

\$45.00 monthly charge
Unlimited monthly minutes

UNL Text Messaging

Unlimited M2M Text
Unlimited Text Message

Email & Web Unlimited

Unlimited monthly gigabyte

UNL Picture/Video MSG

Unlimited monthly Picture & Video

Monthly Charges

Business Unlimited Smartphone	07/25 - 08/24	45.00
Addl Smartphn Data Access	07/25 - 08/24	25.00
		\$70.00

Equipment Charges

Device Payment Agreement 1313274940 - Payment 21 of 24	47.91
Paid 958.35	
Past Due .00	
Balance (after this month's current payment) 143.73	
\$47.91	

Have more questions about your charges?
Get details for usage charges at
b2b.verizonwireless.com.



Need-to-Know Information

Explanation of Surcharges

Surcharges include (i) a Regulatory Charge (which helps defray various government charges we pay including government number administration and license fees); (ii) a Federal Universal Service Charge (and, if applicable, a State Universal Service Charge) to recover charges imposed on us by the government to support universal service; and (iii) an Administrative Charge, which helps defray certain expenses we incur, including: charges we, or our agents, pay local telephone companies for delivering calls from our customers to their customers; fees and assessments on our network facilities and services; property taxes; and the costs we incur responding to regulatory obligations. **Please note that these are Verizon Wireless charges, not taxes. These charges, and what's included, are subject to change from time to time.**

Bankruptcy Information

If you are or were in bankruptcy, this bill may include amounts for pre-bankruptcy charges. You should not pay pre-bankruptcy amounts; they are for your information only. In the event Verizon receives notice of a bankruptcy filing, pre-bankruptcy charges will be adjusted in future invoices. Mail bankruptcy-related correspondence to 500 Technology Drive, Suite 550, Weldon Spring, MO 63304.

Returned Payments

In the event your check for payment of your wireless bill is returned by your bank for insufficient or uncollected funds, Verizon Wireless may resubmit your check electronically to your bank for payment from your checking account.

Late Payment Information

A late payment applies for unpaid balances. The charge is the greater of \$5 or 1.5% per month, or as permitted by law. Failure to pay bills on time may result in negative credit reporting.

More On Wireless Taxes And Surcharges

Your total charges for this month's bill cycle are \$121.89.

This includes charges for one or more bundled Verizon service plans that include voice, messaging, data, or other services for which you pay a monthly plan charge.

This bill cycle, your fixed monthly plan charges were \$45.00 (before applying any discounts or credits, and excluding other charges such as overage, late payment, taxes, Verizon surcharges, and equipment).

To accurately bill taxes and Verizon surcharges, we regularly look at past network usage by you and other customers with similar plans to allocate this fixed monthly plan charge among the services included in the bundle.

In this bill cycle, we have allocated this amount as follows: \$2.89 for voice, \$0.58 for messaging, \$41.53 for data, and \$0.00 for other services.

For more information, please go to vzw.com/taxesandsurcharges.

FUSC Change

The Federal Universal Service Charge (FUSC) is a Verizon Wireless charge that is subject to change each calendar quarter based on contribution rates prescribed by the FCC. On July 1, the FUSC decreased to 10.06% percent of assessable wireless charges, other than separately billed interstate and international telecom charges. The FUSC on separately billed interstate and international telecom charges decreased to 31.8% percent. For more details, please call 1-888-684-1888

Introducing Plan Manager

Now you can see everything your plan has to offer at a glance, like your entertainment bundles and ways to keep your phone safer. Check out all your perks and benefits - all in one place - online or in the My Verizon app.

338 State Street
Perth Amboy, NJ 08861
7328263575
orders@printingcopycenter.com
printingcopycenter.com



BILL TO

Noelia Colon, BID/UEZ
Executive Director
City of Perth Amboy
Business Improvement District

INVOICE 13353A

DATE 07/30/2021 TERMS Net 15

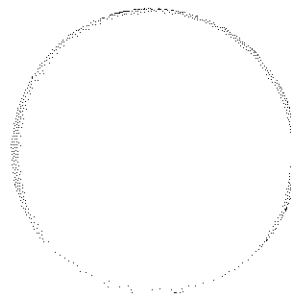
DUE DATE 08/14/2021

DATE	ACTIVITY	QTY	RATE	AMOUNT
07/30/2021	Door Hangers 9 x 4 inches / Color / Doubled Sided Print / 16 Pt UV Gloss Cover / Punch Hole	300	0.6666667	200.00

Thank you for your business.
We hope to see you again!

TOTAL DUE \$200.00

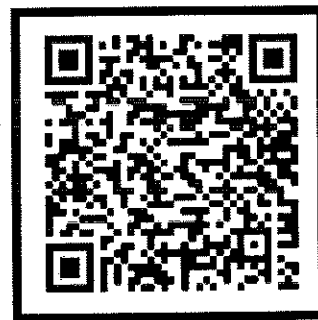
OFFICE: (732) 826-3575 | FAX: (732) 826-3395 |
ORDERS@PRINTINGCOPYCENTER.COM



SORRY WE MISSED YOU!

Please fill out our Business Contact Form to make sure you receive business information and City notices for business/property owners!

Access the form by pointing your phone camera toward the QR Code.



Or go online to:
tinyurl.com/PABIDBusinessContact



PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT | 260 HIGH STREET
732-442-6421 | WWW.TINYURL.COM/PERTHAMBOYBID

SENTIMOS NO HABERLOS VISTO

Por favor complete la forma de contacto para asegurarse de recibir información comercial y avisos de la ciudad para dueños de negocios y propiedades.

Acceda al formulario apuntando la cámara de su teléfono hacia el código.



Usa el enlace:
tinyurl.com/PABIDBusinessContact



PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT | 260 HIGH STREET
732-442-6421 | WWW.TINYURL.COM/PERTHAMBOYBID

CITY OF PERTH AMBOY

260 HIGH STREET
PERTH AMBOY, NJ 08861

INVOICE

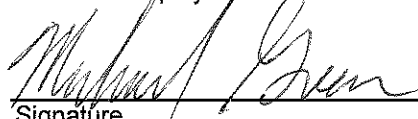
Date: 2-Aug-21

TO: Business Improvement District

QUANTITY	DESCRIPTION	UNIT PRICE	RATE	AMOUNT
	Reimbursement for Salaries:			
	Noelia Colon, BID Coordinator Third Quarter 2021			\$ 19,380.00
	Reimbursement for Fringe Benefits:			
	Noelia Colon, BID Coordinator Third Quarter 2021			\$ 6,730.72
TOTAL DUE				\$ 26,110.72

CERTIFICATION:

Having knowledge of the facts in the course of regular procedures, I certify that the materials and supplies have been received or the services rendered; said certification is based on delivery slips acknowledged by a municipal official or employee or other reasonable procedures.


Signature

BOS. ADMIN.
Title

8/3/21
Date

Make checks payable to **CITY OF PERTH AMBOY**.
Questions concerning this invoice should be directed to:
Michael E. Greene, City Administrator
732-826-0290 X4007

CITY OF PERTH AMBOY

INVOICE

260 HIGH STREET
PERTH AMBOY, NJ 08861


Date: 2-Aug-21

TO: Perth Amboy Business Improvement District
Perth Amboy City Hall
260 High Street
Perth Amboy, NJ 08861

QUANTITY	DESCRIPTION	UNIT PRICE	RATE	AMOUNT
	Repairs and Maintenance to Mini-Vacs and Sweepers See DPW Invoice (Services to Date)			\$ 2,269.20
PLEASE PAY BY AUGUST 15, 2021				
TOTAL DUE				\$ 2,269.20

CERTIFICATION:

Having knowledge of the facts in the course of regular procedures, I certify that the materials and supplies have been received or the services rendered; said certification is based on delivery slips acknowledged by a municipal official or employee or other reasonable procedures.


 Signature

DVS. ADMIN
 Title

8/10/21
 Date

Make checks payable to **CITY OF PERTH AMBOY**.
 Questions concerning this invoice should be directed to:
 Michael E. Greene, City Administrator 732-826-0290 X4007

CITY OF PERTH AMBOY

260 HIGH STREET
PERTH AMBOY, NJ 08861

INVOICE

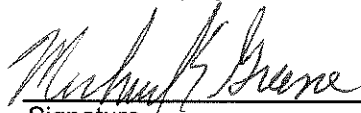
Date: 2-Aug-21

TO: Perth Amboy Business Improvement District
Perth Amboy City Hall
260 High Street
Perth Amboy, NJ 08861

QUANTITY	DESCRIPTION	UNIT PRICE	RATE	AMOUNT
	Reimbursement for Street Sweeper Salary Third Quarter 2021 Clean Team - Salaries			\$ 8,850.00
TOTAL DUE				\$ 8,850.00

CERTIFICATION:

Having knowledge of the facts in the course of regular procedures, I certify that the materials and supplies have been received or the services rendered; said certification is based on delivery slips acknowledged by a municipal official or employee or other reasonable procedures.


Signature

BUS. ADMIN.
Title

8/3/21
Date

Make checks payable to **CITY OF PERTH AMBOY**.

Questions concerning this invoice should be directed to:

Michael E. Greene, City Administrator 732-826-0290 X4007



Invoice

August 2, 2021

Invoice Number: EPR-08022021

Invoice to: Perth Amboy Business Improvement District (BID)
260 High Street, Perth Amboy, New Jersey 08861

Overview of the Assignment

Essential PR was asked to draft a news release about the presentation of the Transition Mural to the City of Perth Amboy. The community's leaders attended the "reveal" ceremonies on Friday, July 9. We also attended the event at 86 Smith and took photographs of the official ceremonies.

The BID's office received a draft of the news release on July 13. Before submitting the draft of the release, we asked the mural artist Emilio Florentine to review his quote, and make any changes. The artist approved his quote.

We also reviewed the remarks made by the following leaders, who attended the mural presentation:

- Honorable Helmin Caba, Mayor of the City of Perth Amboy
- Tashi Vazquez, head of the Office of Economic & Community Development
- Barry Rosengarten, Chairman of the BID
- Noelia Colon, Executive Director of the BID.

Mayor Caba is also quoted in the news release along with comments by Ms. Colon.

We also sent the BID a group of digital images that were taken during Transitions Mural ceremonies.

On July 26, we resent the news release to the BID for review and approval.

The assignment was completed as requested by the BID and the cost is \$200.00

Payment is due upon receipt.

Please make the payment to Essential Communications, LLC

Essential Communications, LLC
29 Highpoint
Cedar Grove, New Jersey 07009
973-509-3431
robertrinklin@outlook.com
973.768.2425

Essential Public Relations
29 Highpoint
Cedar Grove, New Jersey 07009
973-509-3431, 973.768.2425
robertrinklin@outlook.com



Village
Office Supply

Serving NJ
REMIT TO: Ph: 732.564.1700 Fx: 732.564.1701
600 Apgar Drive, Somerset, NJ 08873

INVOICE

DATE: NUMBER:

08/04/21 4459015-0

Customer No 47105 DEPT 01

CHARGE
INVOICE
ROUTE # 27

Sales Person 53
Writer 112
Federal #22-2955497
PO Number NOELIA

Time 09:00:31
Page 1 OF 1

Billing Address

CITY OF PERTH AMBOY
ACCOUNTS PAYABLE
260 HIGH ST
PERTH AMBOY NJ 08861

Shipping Address

CITY OF PERTH AMBOY
NOELIA COLON
260 HIGH ST, 2ND FLR
PERTH AMBOY NJ 08861

Item Number	Ship Co	Description	UN	Order Qty	B/O Qty	Ship Qty	Unit Price	Extended
Who Called : FAX								
62907	CLI	PROTECTOR,SHEET,NO-HOLE,CLR	BX	1		1	9.500	9.50
69701	DEF	HOLDER,SIGN,STND,SIDELD,LTR	EA	2		2	11.862	23.72
74828	RAC	DISINFECTANT,SPRAY,LYSOL,CL	EA	1		1	9.870	9.87
79-104	AVE	BINDER,VIEW,EZD,HVYDTY,4,WE	EA	2		2	31.530	63.06
79-199	AVE	BINDER,VIEW,EZD,HVYDTY,1,WE	EA	2		2	10.403	20.81
SP17206	NAT	FOLDER,CLSSFCTN,LTR,2DIV,RD	BX	1	1		39.750	.00
RELEASE QUOTE PER NOELIA COLON - NO PO NEEDED!								
SHIPPED WEIGHT (10.100)								

**If a signed voucher is required for payment of this invoice,
please forward voucher via mail, fax or email to the following:**

Village Office Supply
Attn: Accounting Dept
600 Apgar Dr
Somerset, NJ 08873

Fax: 732-564-1701
Email: accounting@villageoffice.com

Thank you

RETURNS FOR STANDARD MDSE ACCEPTED W/IN 30 DAYS

SUB-TOTAL 126.96

TOTAL 126.96

www.VillageOffice.com
Terms: Net 30 Days

To receive invoices via email,
please contact us at accounting@villageoffice.com





Village
Office Supply

Serving NJ
REMIT TO: Ph: 732.564.1700 Fx: 732.564.1701
600 Apgar Drive, Somerset, NJ 08873

INVOICE

DATE: NUMBER:

08/25/21 4459015-1

Customer No 47105 DEPT 01

CHARGE
INVOICE
ROUTE # 27

Sales Person 53
Writer 112
Federal #22-2955497
PO Number NOELIA

Time 09:00:46
Page 1 OF 1

Billing Address

CITY OF PERTH AMBOY
ACCOUNTS PAYABLE
260 HIGH ST
PERTH AMBOY NJ 08861

Shipping Address

CITY OF PERTH AMBOY
NOELIA COLON
260 HIGH ST, 2ND FLR
PERTH AMBOY NJ 08861

Item Number	Ship Co	Description	UN	Order Qty	B/O Qty	Ship Qty	Unit Price	Extended
SP17206	NAT	Who Called : FAX FOLDER,CLSSFCTN,LTR,2DIV,RD RELEASE QUOTE PER NOELIA COLON - NO PO NEEDED! ON BO 8-24 SHIPPED WEIGHT (4.030)	BX	1		1	39.750	39.75

**If a signed voucher is required for payment of this invoice,
please forward voucher via mail, fax or email to the following:**

Village Office Supply
Attn: Accounting Dept
600 Apgar Dr
Somerset, NJ 08873

Fax: 732-564-1701
Email: accounting@villageoffice.com

Thank you

WE APOLOGIZE FOR THE DELAY ON THESE ITEMS.

SUB-TOTAL 39.75

TOTAL 39.75

www.VillageOffice.com
Terms: Net 30 Days

To receive invoices via email,
please contact us at accounting@villageoffice.com





FORDS
450 NEW BRUNSWICK AVE
FORDS, NJ 08863-9998
(800)275-8777

08/05/2021 03:23 PM

Product	Qty	Unit Price	Price
Uncle Sams Hat	265	\$0.20	\$53.00

Grand Total: \$53.00

Credit Card Remitted \$53.00

Card Name: VISA
Account #: XXXXXXXXXXXXX2942
Approval #: 025953
Transaction #: 387
AID: A0000000980840 Chip
AL: US DEBIT
PIN: Not Required

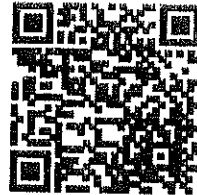
USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

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Track your Packages
Sign up for FREE @
<https://informedelivery.usps.com>

United States Postal Service
NOW HIRING NATIONWIDE
Career Path Positions with Benefits
Apply online at
www.usps.com/careers

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: <https://postalexperience.com/Post>
or scan this code with your mobile device.



or call 1-800-410-7420.

UFN: 336586-0330
Receipt #: 840-50880259-1-1274521-1
Clerk: 14

City of Perth Amboy
Business Improvement District

Total Bill List	\$ 19,588.89
Date	9/14/2021

NAME	APPROVED
Antonio Abreu	
Lisett Lebron	
Asim Malik	
Sergio Diaz	
Mayor Helmin Caba	
Fausto Diaz	
Iris Diaz	
Reyes Ortega	
Mayor's Designee	
Samuel Quezada	
Melvin Rodriguez	
Elizabeth Sanchez	
James Snyder	
Chairman Rosengarten	

Motion:

Second:

Veronica Pacheco
441 Penn Street
Perth Amboy, NJ 08861

Invoice

Invoice # 0821
Date: July 9, 2021

BILL TO:
PABID
260 High Street
Perth Amboy, NJ 08861

DESCRIPTION	DATE(S)	UNIT	RATE	AMOUNT
Vendor Services (Clerical)	8/1/2021-8/31/2021	99	\$15.00	\$1475.00
			TOTAL	\$1475.00



Pashman Stein Walder Hayden
 Court Plaza South
 21 Main Street, Suite 200
 Hackensack, NJ 07601
 (201) 488-8200
 Tax I.D. 22-3384189

Noelia Colon, Executive Director
 Downtown Perth Amboy Business Improvement District, Inc.
 260 High Street
 Perth Amboy, NJ 08861

September 13, 2021
 Invoice #96535
 File Number: 29505-001

RE: General

PROFESSIONAL SERVICES

Date	Attorney	Description	Hours
08/03/2021	DGuada	OPMA: revisions to rogs to be served on plaintiffs; Encarnacion: review of law and letter to counsel sending Notice; BID: review of and revisions to Business Expense Policy;	2.80
	MMY	Review and analyze rogs and NTP to Plaintiffs.	0.30
08/09/2021	MMY	Draft litigation hold letter in J. Baratta and S. Marquez-Villafane matters.	0.80
08/10/2021	DGuada	Encarnacion: finalized letter to counsel; Admin: advice and counsel; OPMA lawsuits: revised and finalized interrogatories and notices to produce	1.60
08/17/2021	DGuada	OPMA Stephanie case: advice and counsel; drafted proposed response to settlement offer and follow up	1.00
08/20/2021	DGuada	Finalizing letter to Leurs re settlement of Villafane case and further discussions with Leurs;	0.80
08/31/2021	MMY	Review decision from court re: OPRA; draft settlement agreement re: Stephanie's OMPA complaint.	2.30
	Total		9.60

DISBURSEMENTS

Description	Amount
UPS-1018574571	\$15.00

Total \$15.00

PROFESSIONAL SERVICES SUMMARY

Attorney		Description	Hours	Rate	Amount
MMY	Yenicag, Marc	Associate	3.40	\$250.00	\$850.00
DGuada	Guadalupe, Daniel R.	Partner	6.20	\$250.00	\$1,550.00
Total			<u>9.60</u>		<u>\$2,400.00</u>

Total Fees & Disbursements \$2,415.00

Previous balance \$12,500.00

Balance due upon receipt \$14,915.00



PO BOX 489
NEWARK, NJ 07101-0489

Manage Your Account	Account Number	Date Due
b2b.verizonwireless.com	342311378-00001	09/16/21
Change your address at http://sso.verizonenterprise.com	Invoice Number	9887019781

Quick Bill Summary

Jul 25 – Aug 24



PERTH AMBOY BUSINESS IMPROV
260 HIGH ST
PERTH AMBOY, NJ 08861-4451

00039874
K108

Previous Balance <i>(see back for details)</i>	\$121.89
Payment – Thank You	-\$121.89
Balance Forward	\$0.00
Monthly Charges	\$70.00
Usage and Purchase Charges	
Voice	\$0.00
Messaging	\$0.00
Data	\$0.00
Equipment Charges	\$47.91
Surcharges and Other Charges & Credits	\$2.67
Taxes, Governmental Surcharges & Fees	\$1.31
Total Current Charges	\$121.89

Total Charges Due by September 16, 2021 \$121.89

Pay from phone	Pay on the Web	Questions:
#PMT (#768)	At b2b.verizonwireless.com	1.800.922.0204 or *611 from your phone



PERTH AMBOY BUSINESS IMPROV
260 HIGH ST
PERTH AMBOY, NJ 08861-4451

Bill Date August 24, 2021
Account Number 342311378-00001
Invoice Number 9887019781

Total Amount Due

Will be submitted to credit card on 09/14/21
DO NOT MAIL PAYMENT **\$121.89**

P.O. BOX 408
NEWARK, NJ 07101-0408



98870197810103423113780000100000012189000000121893



Invoice Number 9887019781 Account Number 34231378-00001 Date Due 09/16/21 Page 3 of 6

Overview of Lines

Line Number	Line Description	Page Number	Monthly Charges	Usage and Purchase Charges	Equipment Charges	Surcharges and Other Credits	Taxes, Governmental and Fees	Third-Party Charges (includes Tax)	Total Charges	Voice Plan Usage	Messaging Usage	Data Usage	Voice Roaming	Messaging Roaming	Data Roaming
732-372-8772	Noelia Colon	4	\$70.00	-----	\$47.91	\$2.67	\$1.31	---	\$121.89	3	78	4.481GB	-----	---	-----
Total Current Charges			\$70.00	\$0.00	\$47.91	\$2.67	\$1.31	\$0.00	\$121.89						



Summary for Noelia Colon: 732-372-8772

Your Plan

Business Unlimited Smartphone

\$45.00 monthly charge
Unlimited monthly minutes

UNL Text Messaging

Unlimited M2M Text
Unlimited Text Message

Email & Web Unlimited

Unlimited monthly gigabyte

UNL Picture/Video MSG

Unlimited monthly Picture & Video

Monthly Charges

Business Unlimited Smartphone	08/25 - 09/24	45.00
Addl Smartphn Data Access	08/25 - 09/24	25.00
		\$70.00

Equipment Charges

Device Payment Agreement 1313274940 - Payment 22 of 24	47.91
Paid 1006.26	
Past Due .00	
Balance (after this month's current payment) 95.82	
\$47.91	

Have more questions about your charges?
Get details for usage charges at
b2b.verizonwireless.com.

NJBIZ

PO Box 1051 • Williamsport PA 17703

P: 866-288-7699 • F: 570-955-3630

www.NJBIZ.com

Renewal Notice:

- \$79.00 1 year
 \$129.00 2 year
 \$179.00 3 year

Upgrade to *NJBIZ Premium: Print & Digital + Data*

- \$329.00 1 year

*Includes applicable tax



9672450-STR2-PREN02
NOELIA COLON
UEZ COORDINATOR
CITY OF PERTH AMBOY UEZ AND OFFICE OF EC
260 HIGH ST
PERTH AMBOY NJ 08861-4491

Reply by: 09/15/2021 Order #: 10447803

Please Check One:

- Check Enclosed (Make payable to: NJBIZ)
 Bill Me

Pay by Credit Card

- AMEX MasterCard Discover VISA

Card Number _____ VCode _____

Signature _____ Exp Date _____

Cardholder Name _____

Card Billing Address _____

Phone _____ Email _____

- Auto Renew!** Yes, charge my credit card at the current rate 30 days from expiration.

Please make changes to your information above if needed.

Detach and return the top portion in the envelope provided.

RENEWAL NOTICE

Dear Noelia Colon:

I am writing to let you know that your subscription to *NJBIZ* is coming up for renewal. Please renew today to ensure that you don't miss a single issue of *NJBIZ*.

NJBIZ delivers state-wide business news like no other media outlet in New Jersey. I'm confident that another year of our paper will keep you informed, engaged and on top of the business community. In addition to the print issues, your subscription includes the Book of Lists and full access behind the paywall at www.njbiz.com.

To renew, please return the renewal form above, give us a call at 866-288-7699 or email service@njbiz.com.

Thank you for your readership!

Sincerely,

Disa Ehrler
Circulation and Fulfillment Director

PS: Upgrade to Premium with your renewal for access to our list database!



Quote: Review For Your Final
Confirmation #(24929) - September
8, 2021

Your final quote details are below. **You must accept the quote and select your payment method online.** Note: Unless noted otherwise, shipping is to a commercial location with dock and/or forklift service and open delivery hours. Appointments, limited access locations, lift-gate service, and other special requests will incur additional charges. All orders arrive shrink-wrapped on pallets.

[Accept Offer and Choose Payment Method](#)

Have questions or need assistance processing your payment? Contact EarthPlanter at sales@earthplanter.com or call [877-815-9276](tel:877-815-9276)

Request #24929

Product	Quantity	Unit Cost	Extended Price
---------	----------	-----------	----------------



Urban
 Vase 31 - Millstone
 (#EPMV31-)

50	\$299.00	\$14,950.00
----	----------	-------------

Subtotal before Discounts: (subtotal based on List Price)	\$19,950.00
---	-------------

Discount Applied:	-\$5,000.00
--------------------------	-------------

Shipping:	\$538.00 via FedEx Freight Economy
------------------	---------------------------------------

Tax:	\$0.00
-------------	--------

Total:	\$15,488.00
---------------	-------------

Shipping Appointment Contact: Frank Hoffman

Shipping Appointment Phone: (732) 826-2010

Shipping Appointment Requested: Yes

Proposal Notes:

- **Special Volume Pricing Applied. Minimum order of (50) Ground Models Required.**
 - Order must be accepted and ship in September to qualify as new pricing went into effect Sept 1.
 - Urban Vase 31 New List Price \$439, Perth Amboy cost \$299 during Sept. Account can place any reorders @ \$339 ea. until 12/31/21.
- Stone-effect colors included in price. Deep Bronze extra.
- Shipping FedEx Freight to a commercial location with a dock or forklift for unloading. Additional FedEx fees will apply for special service such as liftgate.
- Total Pallets: (5)
- 100% Made in the USA, Lifetime Planter Warranty Included.
- Payment: Account can be invoiced in full with a PO#. Terms NET 30 Days. No Credit cards accepted for this purchase.
- *Thank You for Your Support Noelia!!!*

Emails being CC'ed: None

Billing address

Shipping address

*Noelia Colon, BID Executive Director
City of Perth Amboy
260 High Street
Perth Amboy, NJ 08861
(732) 442-6421
ncolon@perthamboynj.org*

*Frank Hoffman
City of Perth Amboy DPW
599 Fayette Street
Perth Amboy, NJ 08861*

Thank You for this opportunity and your support of EarthPlanter.

Business Hours: M-Thursday 8-5:00, Friday 8-3:30 EST.

Quote requests received over the weekend will be processed on Monday.

EXPANSION PROPOSAL FOR PERTH AMBOY BID



**OFFICE OF THE MAYOR
HELMIN J. CABA**

EXECUTIVE SUMMARY

Expand BID boundaries to include the entire City of Perth Amboy to realize the successful and continued growth of the business infrastructure and the community as a whole. The new Special Improvement District (SID) will be poised to deliver services over and above those currently provided, which will in turn position Perth Amboy as the ideal place to live, shop, work and visit by focusing on these key areas:

- Marketing
- Business Development/Improved Business Conditions
- Capital Improvements/Projects
- Community Resource Services
- Parks & Public Services
- Revitalization

OBJECTIVE

1. Establish Perth Amboy as a 'smart city'; use of different types of electronic methods and sensors to collect data. Insights gained from that data are used to manage assets, resources and services efficiently; in return, that data is used to improve the operations across the city.
2. Enhance the mix of retail, entertainment, housing, and other prospects.
3. Define and attract new businesses and similar opportunities that can act as anchors for investment, employment, and revitalization.
4. The opportunity for arts and cultural venues will also help to enhance diversity.
5. Integrate and link all business corridors with transit-oriented development activity. Visually and thematically, enhancing opportunities for pedestrians, tourists, and others coming through Perth Amboy while improving access to services.
6. Create a "sense of place" for the city. In addition to commercial investments, other approaches include the creation of more green space, places to converse and gather, and general beautification. The waterfront is a key asset for this strategy.
7. Seek out opportunities for engaging young people in civic, educational, recreational, and entertainment venues.
8. Increase access to employment opportunities and career planning.
9. Collaborate with resources (grants, venues, land use) to connect the city to the arts. Cultural and arts related investment can play a significant role in improving the appearance of the city.
10. Enhance public safety by initiating physical improvements to streets, enhancing policing, and establishing a collaborative engagement of residents, businesses, and other stakeholders.

EXPANSION PROPOSAL FOR PERTH AMBOY BID



OFFICE OF THE MAYOR
HELMIN J. CABA

OPPORTUNITY

- Regional Context within the Boston-Washington DC Northeast Corridor, Perth Amboy is the “crossroads” of major transportation systems including road, rail, air and water transit facilities. It is position to provide deep-water access for national and international marine traffic.
- Strong Retail Base with the City’s primary commercial corridor – the Smith Street Central Business District –, inclusive of a cadre of renowned restaurants that have regional acclaim and recognition.
- Social Infrastructure consisting of a strong system of anchor institutions in healthcare, education, social service, and workforce development that are committed to collaboration.
- Population Diversity and Growth patterns that show a steady influx of families with school-aged children moving into the community with a rich composition of many cultures.
- Recent Development and Investment Activity through the steady and growing rise of public and private investment into the City of Perth Amboy real estate and its overall infrastructure.
- Investment Opportunities through a significant cluster of available and affordable small to large industrial facilities that represent a significant volume of potential arts-based, creative placemaking commercial and/or residential development.
- Initiate plans for streetscape enhancement, façade design, and general beautification;
- Create inviting public spaces which foster festivals, special events, as well as everyday human interaction.
- Develop more green space with range of recreation amenities.
- Brand Business District to give it a “sense of place”; improve bus stops, bike access, parking availability, and general vehicular and pedestrian safety; Ideas include building more visible (and aesthetically pleasing) crosswalks and improving signage, signalization, and lighting.
- Work to make zoning changes that accommodate these recommendations.

EXPANSION TIMELINE

- Phase 1- Proposal and Planning August 2021
- Phase 2- Restructuring including Bylaws and Board Member Size November 2021
- Phase 3- Implementation January 2022

BID EXPANSION PHASED IMPLEMENTATION GUIDE

Phase 1 – Planning/Assessment (August 2021)

ACCESS PROPERTY DATA BY TYPE
 Verified by Tax Assessor

- * Apartments
- * Industrial
- * Vacant
- * Commercial

Using existing formula with expansion model: \$0.12 of \$100 = \$5Million

RECOMMENDATIONS
 What is the right rate?
 Future budget and impact on new small business owners
 Benefit to reduce amount for property owners and plan of utilizing the anticipated funds

FINANCE AND PROGRAMMING
 Revenue utilized to shape the area in a positive and creative way.
 Programs will be sustainable and well-funded through new SID

IDENTIFY COMMUNITY/BUSINESS NEEDS
 Survey

- * Lighting
- * Parking
- * Public Safety
- * Cleanliness
- * Marketing

CONTINUOUS IMPROVEMENT PROCESS MODEL

Phase 2 – Structuring BID Bylaws (November 2021)

MAYOR'S VISION ON EXPANSION
 To boost and reinforce economic enhancement of businesses and property owners in preparation for its longevity and scalability.

BYLAWS COMMITTEE
 Committee of 4

TRANSITION
 Board Member Makeup

- * Mayor
- * 2 council members
- * 4 from the private sector

Executive Board Structure

- * Chair, Vice Chair, Secretary, and Treasurer

PHASE INVENTORY NEEDS
 * Build Marketing Campaign created to respond to assessment needs
 * Identify strategic plan with short, mid and long-term goals

OVERVIEW THE BUDGET

- * Personnel & Fringe
- * Materials, Supplies & Equipment
- * Facility Costs
- * Projects/Initiative

Phase 3 – Proposal and Final Implementation (January 2022)

Final oversight of the budget by City Council members and Mayor

Campaign Strategy: Moving Perth Amboy Forward

Information and Advocacy

Legal and Financial Review – Audit

New BID Plan reviewed by government agencies including (Key stakeholder depts: Mayor's Office, County, and State-DCA)

Letters of Support from local officials, business owners, before going to the City Council for approval.

After reviewing the planning and outreach activities in Phases 1 and 2, City Council to hold 2 public hearings

Following hearings, City Council votes (either amendment to existing ordinance) to expand the BID.

Press Release/Campaigns/Digital/Publish Final Working Plan Document/Bylaws



Diana St. John, Principal
South Amboy, NJ
732.586.9399

**City of Perth Amboy, NJ
Special Improvement District
Consultation Proposal**

March 30, 2021

Executive Summary

This Special Improvement District (SID) Consulting is proposed for the purpose of guiding the City of Perth Amboy Administrative staff, SID Board of Trustees/ Members, and staff on the strategic and tactical measures it must take in order to realize the successful and continued growth of the business infrastructure and the community as a whole.

The goal being that the new SID will be poised to deliver services over and above those currently provided, which will in turn position Perth Amboy as the ideal place to live, shop, work and visit by focusing on these key areas:

- Marketing
- Business Development/Improved Business Conditions
- Capital Improvements/Projects
- Community Services
- Parks & Public Services
- Revitalization

Consulting services for the new SID builds on the groundwork of the existing BID;. preparing the City for future revenue streams that will be utilized to shape the area in a positive and creative way. Programs and upgrades will be attainable through a well-funded, efficient, and fiscally responsible SID.

IRun New Jersey, LLC (Diana St. John, Principal) proposes the following consultation fee for services with monthly reportable activities:

\$80/per hour billable monthly; not to exceed \$24,000 during 2021, with an option to renew after December 31, 2021, provided all parties are in agreement and satisfied.



Diana St. John

- Red Bank Visitor Center Board of Directors
 - Red Bank RiverCenter (Special Improvement District)
- Jersey Shore Convention and Visitors Bureau Executive Board
 - Co-Founder of “Red Bank Alive, a Cultural Partnership”
 - Governor’s Conference on Tourism Planning Committee
- Keynote Speaker League of Municipalities “Economic Impact of Travel and Tourism”
 - Monmouth County Arts Corridor
 - Red Bank West Side Task Force
 - Red Bank Restaurant Association Committee
 - Count Basie Theatre Capital Campaign PR Leader
 - Count Basie Theatre Strategic Planning Committee
 - Monmouth County Arts Council Committee
 - Monmouth County Tourism Committee
- Tri City Arts Tour Committee (Red Bank, Long Branch, Asbury Park)

“Diana is very well respected in her field and is known for her keen ability to create partnerships where none existed!” Jeanne DeYoung, Director of Tourism, Monmouth County

FILED

August 20, 2021

Hon. Thomas Daniel McCloskey, J.S.C.

The Hon. Thomas Daniel McCloskey, J.S.C.

Superior Court of New Jersey
Law Division, Middlesex County
Middlesex County Courthouse
56 Paterson Street, 3rd Floor
Chambers/Courtroom 305
New Brunswick, New Jersey 08903

PREPARED BY THE COURT:

:
J. BARATTA INDUSTRIES, L.L.C., a :
New Jersey limited liability company, d/b/a :
J. Baratta Industries, :
:
Plaintiff, :

v. :

DOWNTOWN PERTH AMBOY :
BUSINESS IMPROVEMENT :
DISTRICT, INC., a New Jersey :
corporation, and **NOELIA COLON,** in her :
official capacity as BID/UEZ Executive :
Director and Records Custodian of the :
Downtown Perth Amboy Business :
Improvement District and in her personal :
capacity, :
:
Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-L-4356-20
DOCKET NO.: MID-L-4548-20
[Consolidated Matters]

Civil Action
[OPRA Summary Proceedings]

ORDER FOR JUDGMENT

:
J. BARATTA INDUSTRIES, L.L.C., a :
New Jersey limited liability company, d/b/a :
J. Baratta Industries, :
:
:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-L-4548-20

Plaintiff,	:	<u>Civil Action</u>
	:	
v.	:	
	:	
DOWNTOWN PERTH AMBOY	:	
BUSINESS IMPROVEMENT	:	
DISTRICT, INC. , a New Jersey	:	
corporation, and NOELIA COLON , in her	:	
official capacity as BID/UEZ Executive	:	
Director and Records Custodian of the	:	
Downtown Perth Amboy Business	:	
Improvement District and in her personal	:	
capacity,	:	
	:	
Defendants.	:	

THIS MATTER, having come before the Court on the Orders to Show Cause it entered on July 13, 2020 in Dkt. No. MID-L-4356-20 and on July 16, 2020 in Dkt. No. MID-L-4548-20, which actions were consolidated by the Court’s Order of July 16, 2020 (the ”Consolidated Matters”), and for hearing on the initial return date of September 4, 2020; and thereafter, pursuant the Court’s Order of that date, following the completion of a limited period of discovery as therein provided to the parties, for trial on the affidavits and pleadings of the parties which was conducted before the Court on February 2, 2021 and pursuant to R. 4:67-5; and, more specifically,

1. On the application made by Walter M. Luers, Esq. of the Law Offices of Walter M. Luers, LLC, for and on behalf of the Plaintiff, **J. Baratta Industries, L.L.C.** a New Jersey limited liability company d/b/a J. Baratta Industries (“Plaintiff”), seeking relief and entry of judgment in favor of the Plaintiff by way of summary action pursuant to R. 4:67-1 and 2(a), based upon the facts set forth in the Verified Complaint and supporting papers filed with the Court on June 29, 2020 in Dkt. No. MID-L-4356-20 and the Verified Complaint and supporting papers filed on July

8, 2020 in Dkt. No. MID-L-4548-20, and all subsequent submissions pursuant to the Court's ensuing Orders; and

2. On the Notice of Cross-Motion of Norris McLaughlin, P.A., attorneys for and on behalf of the Defendants, **Downtown Perth Amboy Business Improvement District, Inc. and Noelia Colon**, in her official capacity as BID/UEZ Executive Director and Records Custodian for Downtown Perth Amboy BID (collectively, the "Defendants"), and supporting papers filed on July 10, 2020 in Dkt. No. MID-L-4356-20, and the Notice of Cross-Motion of Norris McLaughlin, P.A. and supporting papers filed on July 16, 2020 in Dkt. No. MID-L-4548-20, and all subsequent submissions made pursuant to the Court's ensuing Orders, seeking to dismiss Plaintiff's Verified Complaints in each of the consolidated matters, with prejudice, for failure to state a claim pursuant to R. 4:6-2(e) and for judgment in their favor pursuant to R. 4:67-5;

AND, IN THE PRESENCE OF Walter M Luers, Esq. of the Law Offices of Walter M. Luers, LLC, who appeared for and on behalf of the Plaintiff; Daniel R. Guadalupe, Esq. and Akshar U. Patel, Esq. of the law firm of Norris McLaughlin, P.A., who appeared on behalf of the Defendants, Downtown Perth Amboy Business Improvement District, Inc. and Noelia Colon in her official capacity as BID/UEX Executive Director and Records Custodian for Downtown Perth Amboy BID; and, Peter J. King, Esq. of the law firm of King, Moench, Hirniak & Mehta, LLP, attorneys for and appearing on behalf of the Defendant, Noelia Colon, in her personal capacity;

AND THE COURT, having reviewed and considered the moving and supporting papers submitted on behalf of the Plaintiff, those submitted in opposition and by way of cross-motions to dismiss on behalf of the Defendants, those submitted by each of the parties in reply and sur-reply to their respective submissions; having heard the extensive oral argument of counsel present at the initial return date of September 4, 2020, and at the trial conducted on February 2, 2021 on the

affidavits and the pleadings pursuant to R. 4:67-5, having further considered the post-trial submissions filed by the parties on March 24, 2021, and having found and determined that the pleadings and affidavits (and exhibits) of the parties show palpably that there is no genuine issue as to any material fact, and that final judgment may be rendered thereon;

AND THE COURT, for the reasons set forth in the Court's written Opinion attached hereto and made a part hereof, and for good cause having otherwise been shown:

IT IS on this 20th day of **AUGUST 2021**, **ADJUDGED AND ORDERED**, as follows:

A. That the Plaintiff's renewed and supplemented application for the entry of an Order and Judgment (i) compelling the Defendants to produce and provide to the Plaintiff within 20 days of the service of this Order copies of all remaining documents listed on Exhibit A to the Verified Complaint in Dkt. No. MID-L-4356-20 heretofore provided to the Plaintiff in redacted form (specifically in response to Item No. #6) and not provided to the Plaintiff (specifically, as to Item Nos 26, 27, 28 and 29), (ii) imposing a civil penalty on the Defendant, Noeila Colon, of \$1,0000 out of her personal funds pursuant to N.J.S.A. 47:1A-1.1, and (iii) determining the Plaintiff to be a "prevailing party" under the Open Public Records Act, N.J.S.A. 47:1A-6, et seq. and awarding Plaintiff its reasonable attorneys' fees, be, and the same hereby is **DENIED**;

B. That the Plaintiff's renewed and supplemented application in its Verified Complaint in Dkt. No. MID-L4548-20 for the entry of an Order and Judgment imposing a civil penalty on the Defendant, Noeila Colon, of \$1,000/\$2,500 out of her personal funds pursuant to N.J.S.A. 47:1A-11, this being her first/second civil penalty, and (ii) determining the Plaintiff to be a "prevailing party" under the Open Public Records Act, N.J.S.A. 47:1A-6, et seq. and awarding Plaintiff its reasonable attorneys' fees, be, and the same hereby is **DENIED**;

C. That the Defendants' renewed and supplemented Cross-Motion to dismiss the Plaintiff's Verified Complaint in Dkt. No. MID-L-4356-20 for failure to state a claim pursuant to R. 4:6-2(e) and for judgment in their favor pursuant to R. 4:67-5, be, and the same hereby is **GRANTED**, and that the Plaintiff's Verified Complaint in Dkt. No. MID-L-4356-20, be, and the same hereby is **DISMISSED** in its entirety, with prejudice, and without costs; and

D. That the Defendants' renewed and supplemented Motion to dismiss the Plaintiff's Verified Complaint in Dkt. No. MID-L-4548-20 for failure to state a claim pursuant to R. 4:6-2(e) and for judgment in their favor pursuant to R. 4:67-5, be, and the same hereby is **GRANTED**, and that the Plaintiff's Verified Complaint in Dkt. No. MID-L-4548-20, be, and the same hereby is **DISMISSED** in its entirety, with prejudice, and without costs.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on all counsel of record upon its posting by the Court to the eCourts case jacket for this matter. Pursuant to R. 1:5-1(a), the Movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order.

SO ORDERED:



HON. THOMAS DANIEL McCLOSKEY, J.S.C.

See the Court's written Opinion of even date attached hereto. [R. 1:6-2(f)].

(X) Opposed.

PAPERS CONSIDERED:

(X) Plaintiff's Verified Complaint filed on July 13, 2020 in Dkt. No. MID-L-4356-20, proposed Order to Show Cause, Certification of Counsel (with exhibits), and Letter Brief.

(X) Plaintiff's Verified Complaint filed on July 15, 2020 in Dkt. No. MID-L-4548-20, proposed Order to Show Cause, Certification of Counsel (with exhibits), and supporting Letter Brief.

- (X) Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint in Dkt. No. MID-L-4356-20, Certification of Counsel (with exhibits), Certification of Noelia Colon (with exhibits), and supporting Brief .
- (X) Plaintiff's Opposition Letter Brief to Defendants' Cross-Motion to Dismiss in Dkt. No. MID-L-4356-20, and Certification of Counsel in Opposition (with exhibits).
- (X) Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint in Dkt. No. MID-L-4548-20, Certification of Counsel (with exhibits), Certification of Noelia Colon (with exhibits), and supporting Brief.
- (X) Plaintiff's Opposition Letter Brief to Defendants' Cross-Motion to Dismiss in Dkt. No. MID-L-4548-20, and Certification of Counsel in Opposition (with exhibits).
- (X) Defendants' Reply Brief to Plaintiff's Opposition to Cross-Motion to Dismiss in Dkt. Nos. MID-L-4356-20 (thence consolidated with MID-L-4548-20), Second Certification of Counsel (with exhibits), and Reply Certification of Noelia Colon.
- (X) Plaintiff's Supplemental Letter Brief in support of Orders to Show Cause and in Opposition to Defendants' Cross-Motions to Dismiss in Dkt. Nos. MID-L-4356-2-/4548-20 (consolidated) and Certification of Counsel (with exhibits)
- (X) Defendants' Supplemental Brief in support of Cross-Motions to Dismiss and for Judgment under R. 4:67-5 in Dkt. Nos. MID-L-4356-20/4548-20 (consolidated) Supplemental Fourth Certification of Noelia Colon, Certification of Lisett Lebron, Certification of Frank Hoffman, Certification of Counsel (with exhibits).
- (X) Plaintiff's Post-Hearing submission.
- (X) Defendants' Post-Hearing submission.

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

:
J. BARATTA INDUSTRIES, L.L.C., a :
New Jersey limited liability company, d/b/a :
J. Baratta Industries, :
:
Plaintiff, :

v. :

DOWNTOWN PERTH AMBOY :
BUSINESS IMPROVEMENT :
DISTRICT, INC., a New Jersey :
corporation, and **NOELIA COLON,** in her :
official capacity as BID/UEZ Executive :
Director and Records Custodian of the :
Downtown Perth Amboy Business :
Improvement District and in her personal :
capacity, :
:
Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-L-4356-20
DOCKET NO.: MID-L-4548-20
[Consolidated Matters]

Civil Action
[OPRA Summary Proceedings]

OPINION

:
J. BARATTA INDUSTRIES, L.L.C., a :
New Jersey limited liability company, d/b/a :
J. Baratta Industries, :
:
Plaintiff, :

v. :

DOWNTOWN PERTH AMBOY :
BUSINESS IMPROVEMENT :
DISTRICT, INC., a New Jersey :
corporation, and **NOELIA COLON,** in her :
official capacity as BID/UEZ Executive :
Director and Records Custodian of the :
:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-L-4548-20

Civil Action

Downtown Perth Amboy Business :
 Improvement District and in her personal :
 capacity, :
 :
 Defendants. :

Initially Argued: September 4, 2020 on return date of Order to Show Cause entered on July 13, 2020 in Dkt. No. MID-L-4356-20 and on July 16, 2020 in Dkt. No. MID-L-4548-20 thereafter consolidated by Order of July 16, 2020 (“Consolidated Matters”).

Plenary Evidentiary Hearing Conducted/Argued: February 2, 2021.

Record Closed and Post-Haring submissions filed: March 24, 2021.

Decided: August 20, 2021.

COUNSEL APPEARANCES:

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¹ Formerly of Law Offices of Walter M. Luers, LLC at the outset of these actions.

² Formerly of Norris McLaughlin, P.A. at the outset of these actions.

McCLOSKEY, J.S.C.**I. Preliminary Statement.**

These consolidated matters arise under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, *et seq.* (“OPRA”) and the common law right of access, and came before the Court on Plaintiff’s Orders to Show Cause and Defendants’ cross-motions to dismiss and for judgment. The OPRA claims were made in the early stages of the unprecedented COVID-19 global pandemic that paralyzed every aspect of daily life, business, and all three (3) branches of government in New Jersey (and nationally). Specifically, the actions were filed shortly after Governor Murphy declared a Public Health Emergency and State of Emergency by Executive Order No. 103 on March 9, 2020, Chief Justice Rabner of the New Jersey Supreme Court ordered the suspension of all jury trials (except those in progress) on March 12, 2021 and thereafter issued the first “*Omnibus Order on Court Operations and Legal Practice*” on March 27, 2020 of a total of ten (10) additional Omnibus Orders that would follow, and after the New Jersey Legislature adopted a specific OPRA amendment on March 20, 2020 to adjust deadlines, all due to the impact of the pandemic.

Because of the latter, in these unprecedented times, these consolidated matters were unique and raised issues of first impression concerning the scope and interpretation of the requirements ordinarily implicated by OPRA and the common law right of access, and their application to the facts presented in this instance.

II. Procedural Background.

On June 29, 2020, Plaintiff, **J. Baratta Industries, LLC** (“Plaintiff” or “J. Baratta”), filed its Verified Complaint and application for an Order to Show Cause (“First Action”) in Dkt. No. MID-L-4356-20. On July 10, 2020, the Defendants, **Downtown Perth Amboy Improvement District, Inc.** (“Downtown Perth Amboy BID”, or “BID”), and **Noelia Colon**, the Executive Director and Records Custodian of the Downtown Perth Amboy BID (“Colon”) filed their cross-motion to Plaintiff’s request for an Order to Show Cause in which Defendants asked the Court to dismiss the First Action with prejudice.

On July 8, 2020, Plaintiff filed a second Verified Complaint and application for an Order to Show Cause (“Second Action”) in Dkt. No. MID-L-4548-20.

On July 13, 2020, the Court granted Plaintiff’s application and entered its Order to Show Cause in the First Action and therein set a schedule for the matter to be briefed and a return date for oral argument.

On July 15, 2020, Defendants filed their Answers to the Verified Complaint in the First Action and Second Action and, on July 16, 2020, Defendants also filed a motion to consolidate the First Action with the Second Action.

On July 16, 2020, the Court granted Plaintiff’s application and entered its Order to Show Cause in the Second Action, therein set a briefing schedule, and consolidated the First Action with the Second Action, designating the First Action as the “major case.” Shortly thereafter, Defendants withdrew their motions to consolidate the actions as moot. At that point, the two cases followed identical tracks as Consolidated Matters.

After the parties filed opposition and reply briefs on both applications and cross-motions to dismiss pursuant to the Orders to Show Cause entered on July 13 and 16, 2020, on September 4, 2020 the Court heard oral argument on both of Plaintiff's Orders to Show Cause and Defendants' cross-motions to dismiss. In an Order dated and entered that same day, the Court denied each of the Plaintiff's applications and Defendants' cross-motions to dismiss, without prejudice, ordered the parties to conduct discovery for a limited period of sixty (60) days until no later than November 4, 2020, and directed the parties to submit supplemental briefing on seven (7) specific factual and legal issues that were enumerated in the body of the Court's September 4, 2020, including an eighth issue the Court requested at the conclusion of the final hearing of February 2, 2020 that the parties also address in their supplemental, post-hearing submissions. See "Questions Presented" at pp. 21-22, *infra*.

In these consolidated summary matters, since the pleadings and applications of the Plaintiff and Defendants each raised specific factual and legal issues, many of *first impression* given the overlay of the COVID-19 pandemic and interim inter-related orders issued by all three (3) co-equal branches of New Jersey state government – *i.e.*, the Executive, Legislative and Judicial branches - the Court foresaw the need to allot the parties a limited period of discovery in order to flush out evidentiary support for their respective positions and specific issues the Court enumerated in its Order of September 4, 2020 that it directed the parties to address. Granted this was somewhat out of the ordinary for an OPRA summary proceeding, however, these were (and are) unprecedented times.³

³ As the Appellate Division has previously instructed for summary actions brought under OPRA in normal times, without the COVID-19 overlay:

Without question, proceedings under OPRA are to be conducted in a "summary or expedited manner." N.J.S.A. 47:1A-6; Hartz Mountain, supra, 369 N.J. Super. at 185; Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 378 (App.Div.2003). This means that a trial court is to proceed under the procedures prescribed in Rule 4:67. R. 4:67-1(a). The action is commenced by an order to show cause supported by a verified complaint, and at an initial hearing, if the court is "satisfied with the sufficiency of the application, [it] shall order the defendant to show cause why final judgment should not be rendered for the relief sought." Ibid: R. 4:67-2(a). The court must try the case at the return date of the order to show cause "or on such short day as it fixes." R. 4:67-5; Courier News, supra, 358 N.J. Super. at 378, 378.

In a proceeding conducted under Rule 4:67-5, a court must make findings of fact, either by adopting the uncontested facts in the pleadings after concluding that there are no genuine issues of fact in dispute, or by conducting an evidentiary hearing. Id. at 378-79, 378. For instance, in an OPRA action, as here, the court is obliged when a claim of confidentiality or privilege is made by the public custodian of the record, to inspect the challenged document *in-camera* to determine the viability of the claim. Hartz Mountain, supra, 369 N.J. Super. at 183; see also Loigman v. Kimmelman, 102 N.J. 98 (1986). "That inspection implies the necessity of recorded factfinding by the trial judge as well as the opportunity of the parties to address general principles relative to the claim of confidentiality and privilege, as well, perhaps, an opportunity to the government custodian to argue specifically, as part of the *in-camera* review, why the document should be deemed

However, upon the completion of that limited period of discovery, and pursuant to R. 4:67-5, the Court set the matter down for trial on the affidavits and pleadings, allowed for testimony of witnesses if the parties so chose, but ultimately neither side opted to present live witnesses to adduce testimony as to contested issues and, thus, both the Plaintiff and the Defendants consented to have the Court try the matter on the pleadings, affidavits and permitted additional affidavits and submissions and on the return date of February 2, 2021.

Following the Court's receipt and review of the parties' follow-up post-hearing submissions, the record was closed and as of March 24, 2021. Despite but given additional delays imposed upon the Court and its operations in the interim and since, the Court's decision on the Plaintiff's applications and the Defendants' cross-motions to dismiss now follows.

III. The Court's Findings of Fact.

A. The Parties.

The Plaintiff, J. Baratta Industries, L.L.C. is a New Jersey limited liability company that conducts business under the tradename J. Baratta Industries (hereinafter, "Plaintiff"). Plaintiff's business is located within the boundaries of the Downtown Perth Amboy BID.

The Defendant, Downtown Perth Amboy BID, is a non-profit corporation incorporated in New Jersey in 1991 under the Non-Profit Business Corporation Act, N.J.S.A. 15A: 5-20 et seq. In 1995, by Ordinance No. 776-95, the City of Perth Amboy ("the City") created a Special

Cont'd from previous page:

privileged or confidential or otherwise exempt from the access obligation." Hartz Mountain, supra, 369 N.J. Super. at 183.

Of course, these procedures must be conducted in an expedited manner. Summary actions are, by definition, short, concise, and immediate, and further, are "designed to accomplish the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment." Depos v. Depos, 307 N.J. Super. 396, 399 (Ch.Div.1997) (quoting Perretti v. Ran-Dav's County Kosher, 289 N.J. Super. 618, 623 (App.Div.1996)). Unlike Rule 4:67-2(b), which allows for conversion of a plenary action into a summary action, and, therefore, may require an elaborated record, Rule 4:67-2(a), which governs OPRA actions, does not permit the record to be supplemented by depositions or other forms of discovery. In other words, Rule 4:67 distinguishes between those actions permitted to proceed in a summary manner by rule or statute, as is the case here, and actions that may be converted from plenary actions into summary actions. See Taylor v. Ford Motor Co., 703 F.2d 738, 742-43 (3rd Cir.1983). While the latter specifically contemplate depositions, such protracted discovery is simply not suitable, and, **absent legitimate need**, is not permissible in actions, like OPRA proceedings, that are inherently summary by nature and expedited in manner.

MAG Entertainment, LLC. v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) (emphasis added).

Improvement District under the Special Improvement District Act, N.J.S.A. 40:56-65 to 89. The BID has been designated as the “district management corporation” to manage the Business Improvement District of the City of Perth Amboy, and it has been doing so since 1995. It consists of a Board of Directors largely made of property and business owners within the District who are elected every 1, 2 and 3 years and who are volunteers. The BID has 15 board members.

The BID serves local businesses and property owners with support for economic revitalization, business promotion and educational resources. The BID also serves the community and its visitors by scheduling and coordinating a year-long schedule of special events. The programs include business seminars and skill building programs for employees. The BID also has made significant capital improvements, by offering façade grants to small businesses within the District and by helping maintain the City’s streetscapes.

The BID is not a public body or agency but is instead a separate, private Title 15 non-profit corporation with some public attributes, as the BID is funded by way of special assessments established by the City’s Tax Assessor, approved by the City Council and collected by the Tax Collector. Nevertheless, the BID is expressly subject to the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. and the Open Public Meetings Act, N.J.S.A. 10:4-7 et seq. However, because it is not a public body or agency, the BID is not a contracting unit under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., unless the City by ordinance delegates a specific project to the BID. Thus, except for OPRA and OPMA and approval of its budget by the City Council, the BID is and functions as a private and independent non-profit corporation with IRS 501(c)(6) exemption.

The Defendant, Noelia Colon, is the Executive Director of the Downtown Perth Amboy BID. She has been the Executive Director of the BID since October 2019. Ms. Colon has a bachelor’s degree in Business Administration from The College of New Jersey (2008). Ms. Colon is an employee of the City, having been designated to manage the BID. The BID reimburses the City for her salary, which is included in the budget submitted to and approved by the City Council every year. Other than Ms. Colon, the Downtown Perth Amboy BID does not have any employees or staff, and Ms. Colon is the only one serving in the capacity of administrator and manager. It has an office on the first floor of City Hall where its records are stored. Ms. Colon is the only person managing that office.

On March 16, 2020, Perth Amboy Mayor Wilda Diaz and the Office of Emergency Management declared a State of Emergency for the City of Perth Amboy. From March 16, 2020 through July 8, 2020, City Hall was closed to the public. At all times relevant here, City Hall remained closed, and the public could enter by appointment only.

B. Plaintiff’s First OPRA Request.

On May 12, 2020, Ms. Colon received an email request by the Plaintiff making an OPRA Request consisting of **29 individual requests**. The Request states that Plaintiff was “granting an

additional 10 days past the statutory time period” for a response. Specifically, the Plaintiff requested 29 categories of records, to wit:⁴

1. Please indicate if the BID is a separately incorporated/corporate entity formed pursuant to any state business law, whether Non-Profit, Corporation, Partnership or any other such legal entity, and include a copy of the filing document, the last annual report, and any Business Status Reports or Standing Certificates in possession of the BID for any time period.
2. Any Business Registration Certificates issued to or in the name of the BID or any of the entities identified in the previous request;
3. The EIN notice of the BID, if one exists;
4. A list of any corporate entity of any sort that any BID employee is listed on in their capacity (being indicated by the inclusion of a city address, city phone number or city eMail on such document) as a BID or city employee
5. Employee list for the Perth Amboy Business Improvement District (hereafter "BID"), including position title, date of hire, salary and employment contract/agreement;
- 6. A current list of the BID board members, their dates of election, class of office and expiration of term (and copy of board member application and resume for each member);**
7. Vote list for the 2019 BID Board Elections, including all vote totals (and copy of board member application and resume for each candidate);
8. A list of any websites owned, registered to, operated or controlled by BID personnel;
9. A list of eMail addresses/accounts issued to/used by all BID personnel;
10. A list of any mobile/cellular telephone(s) issued to BID personnel, their phone numbers, and phone bills from 1/1/2020 to 3/1/2020;

⁴ The text of the May 12, 2020 request has been edited slightly by the Court for stylistic consistency and to make minor grammatical corrections. Request Nos. 6, 21, 26, 27, 28 and 29 are bolded **thusly**, for ease of reference, as they are the only requests that remained in dispute between the parties and, thus, what the Court trained its focus on in the resolution of these matters.

11. A list of any vehicles owned, controlled or operated by any BID personnel (including the Year, Make, Model, Plate Number and copy of the current registration and insurance card);
12. The name and address of any bank or depository in which the BID maintains any account, the date of opening of the account(s), the balance of the account(s), the last received bank statement for each account(s), and the names of the authorized signatories on the account(s);
13. BID Check Register from 1/1/2020 to 3/1/2020; 14. The current BID Bylaws, SOPs, regulations, and any other such documents, and the agendas for the meetings in which they were introduced and adopted;
15. All BID meeting Agendas and Minutes for CY 2019;
16. All BID meeting Agendas and Minutes for CY 2020, if any;
17. Any Published Qualifications for the BID Executive Director;
18. Last Published Vacancy/Job Announcement/Posting for BID Exec. Dir. Position;
19. The manner and place of the posting(s) of any such announcement listed in the previous request;
20. Any Filings (test requests, calls, announcements, etc.) with the NJ Civil Service Commission for/from the BID from 2016 to present;
- 21. Job Application and Resume for Noelia Colon;**
22. Employment Agreement/Contract for Noelia Colon; MID-L-004356-20;
23. A list/accounting of any Paid Time Off of any class or sort, owed to Noelia Colon, as of present;
24. All public personnel documents for Noelia Colon;
25. Copy of the last 5 paychecks (or other remittance advice indicating payment or deposit) for Noelia Colon;
- 26. All eMails in the eMail account of Noelia Colon from 1/1/2020 - 2/1/2020;**

27. All eMails in the eMail account of Noelia Colon between Noelia Colon and any official, personnel, contractor, agent, officer, employee, attorney or accountant of the Jewish Renaissance Medical Center, Jewish Renaissance Foundation, and any other related entity (since becoming BID Exec. Dir.);

28. All eMails in the eMail account of Noelia Colon between Noelia Colon and any official, personnel, contractor, agent, officer, employee, attorney or accountant of the Perth Amboy Young Men's Christian Association, Steve Jobin, and any other related entity (since becoming BID Exec. Dir.);

29. Any SMS, iMessage, Text Message or other such form of typed cellular communication between Noelia Colon and the Mayor of Perth Amboy (whether on a city or personal phone) for the period of 1/1/2020 - 2/1/2020.

Prior to the OPRA Amendment discussed, infra, the deadline to respond to an OPRA request was supposed to be *seven business days* after the request was made. OPRA at N.J.S.A. 47:1A-5(i)(1). Since Plaintiff granted the BID 10 days, Ms. Colon reasonably interpreted that to mean an additional ten *business days*, as the unit of measure under the Act is *business days*. Accordingly, absent application of the OPRA Amendment, the deadline to respond would have been *17 business days after the request was made*, or Friday, June 5, 2020.

In May 2020, during the first week after the first OPRA request was received on May 12, 2020, Ms. Colon inquired of Mr. Frederick C. Carr, former Business Administrator for the City of Perth Amboy, when access could be provided to the BID office inside City Hall because 1) City Hall was closed due to the Covid-19 pandemic and the Governor's Executive Orders and 2) there was construction going on inside City Hall and the BID office was inaccessible with furniture blocking access to the file cabinets. Mr. Carr responded that he would let Ms. Colon know, but Ms. Colon did not hear from him thereafter. In fact, City Hall was closed to the public from March 16, 2020 through July 8, 2020 (and since then until now only open to the public by appointment only).

Ms. Colon, as well as other City employees, were subject to the City-wide and State-wide stay-at-home mandate and Ms. Colon was under "disaster leave" which meant she could work for home or remotely and not have to go to City Hall. Nonetheless, due to construction on the first floor of City Hall, the BID's office was inaccessible and through the end of June 2020, access to BID files and records was blocked due to furniture which had been placed in the BID office.

More specifically, as detailed by Mr. Frank Hoffman, the Director of Public Works of the City of Perth Amboy during this period, there was construction being performed on the lower floor of City Hall where the office of the Downtown Perth Amboy BID is located. The BID's office was used as a storage room so that furniture and other items could be moved aside and placed out of the way of the ongoing construction. The office had furniture and other items inside that had to be placed in there, and for safety reasons, no one was allowed to access the office or move any of these items around. As a result, access to the BID's office and files was blocked, and the BID office was inaccessible. On July 1, 2020, Mr. Hoffman sent an email to Ms. Colon confirming that she could have access to the BID office.

As discussed in more detail, infra, during this time Ms. Colon was forced to address and take care of a private health issue with a close relative, which further made it very difficult for her to gather the documents requested, as she had no access to the BID office and she was on disaster leave working from home. In addition, Ms. Colon was remotely responding to the pandemic with time sensitive concerns of the BID's business owners in the District. Yet, as soon as each OPRA Request was made by Plaintiff, Ms. Colon immediately began the work of responding and gathering documents to address these 29 individual and detailed requests.

During May and June 2020 and long before the first lawsuit was filed by Plaintiff on June 29, 2020, Ms. Colon proceeded to identify documents including the by-laws of the BID and search for the certificate of incorporation. Ms. Colon encountered a problem trying to find the BID's IRS letter establishing a federal employer identification number (EIN). Ms. Colon called Roxana Troche, a former BID Executive Director (and the person who trained and transitioned Ms. Colon into her current position) and asked where the documents could be located. Ms. Troche told Ms. Colon that it was in a box in the (inaccessible) BID office which at the time was blocked with furniture during the construction and closure of City Hall. Again, this was all prior to any lawsuit being filed.

On June 2, 2020, Ms. Colon received an email from Plaintiff stating, "Your time has expired" and "You are in violation of state law. Please advise." At 4 p.m. later that day, Plaintiff transmitted a second email to Plaintiff in which Mr. Baratta stated: "Dear Noelia, [k]indly respond indicating you've received my eMail. A response to the substance of it, either as confirmation, with said confirmation or under separate cover would also be appreciated and is expected. Please be guided accordingly."

On June 3, 2020, Ms. Colon responded to Plaintiff's June 2nd email advising Plaintiff that due to the pandemic, the New Jersey Legislature amended the OPRA statute, giving custodians a reasonable time after the deadline, and that his request required a great deal of searching and compilation. Ms. Colon also advised Plaintiff that the deadline was June 5th, per his initial Request. Ms. Colon advised Plaintiff that due to the pandemic situation and the significant task of looking for documents, additional time was needed because "[s]ome of your requests have taken longer to search for and identify." She assured Plaintiff "that you will receive a response to your requests and they will be provided as soon as possible as circumstances permit, pursuant to the above-mentioned OPRA amendment."

On June 3, 2020, Plaintiff responded by email rejecting the circumstances. In relevant part, Plaintiff asked Colon to provide Plaintiff with "objective, reasonable and insurmountable reasons how the emergency has directly affected your ability to comply with this request, if it is not supplied by the deadline as extended and interpreted, legal action will follow for enforcement of the law." Ms. Colon responded to Plaintiff's June 3rd email above on June 5th noting that the impact of the pandemic did not allow a sooner response and that limited access to City Hall and Ms. Colon's private family matters had impacted her schedule. Ms. Colon told Plaintiff that he would receive a response as soon as possible.

On June 9th, copying the Mayor and the entire City Council, Plaintiff wrote: "Your response is overdue. You have alleged no facts relating to the state of emergency that warrant additional time – time you have not even given me the courtesy of requesting. You have until the start of

tomorrow's council meeting to fulfill our request. If you do not, we will file suit against the BID and you personally." In the email he also launched a personal attack against Ms. Colon. Plaintiff accused Ms. Colon of "stealing" a paycheck, securing her position "illegally" in a "backroom deal," and being "embarrassingly overpaid and offensively unqualified." Bluntly and callously, Plaintiff stated that with respect to his OPRA lawsuit it will be "in the court computer where it will stay, and you will have to list it on every job application for the rest of your life." Furthering his obvious, stated motive and underscoring his real intent in filing these actions, Plaintiff's principal concluded "...it it (sic) irrelevant if the charges against you are dismissed."⁵

Notwithstanding this acerbic and unnecessary attack on Ms. Colon's person, integrity and work ethic, she continued working on a response, gathering accessible documents and waiting for the City to provide her with access to the BID office filing cabinets which were blocked by furniture. On June 24, 2020, Ms. Colon responded to Plaintiff's email characterizing it as "disrespectful and unacceptable", and courteously "suggest[ed] that any future communications sent to [her] attention [be] strictly objective questions and/or statements." That same day, on June 24, 2020, Plaintiff responded to Ms. Colon's email above, again copying the Mayor and the entire City Council and members of the media, claiming that Ms. Colon was playing the role of "damsel in distress," interpreting Plaintiff's email as a "threat" with a "fascist notion" and that what Ms. Colon considered unacceptable was of "no interest to [him] whatsoever."⁶ The record reflects no further communication between Plaintiff and Defendants prior to June 30, 2020.

On June 30, 2020, Plaintiff initiated the First Action. On the same day, Mr. Baratta emailed a copy of the filed lawsuit papers to Colon, the Perth Amboy City Council, various attorneys, and the Amboy Guardian, stating that Ms. Colon was "warned" and that Ms. Colon is "solely responsible for the suit against [herself]."

After Ms. Colon received access to the BID office on the very last day of June 2020, Ms. Colon visited the BID office on June 30th and could not find the referenced box. However, she.

⁵ During colloquy with counsel on September 4, 2020, the Court made the point that some of the language in Plaintiff's June 5, 2020 email could be interpreted to reflect bad faith on the part of the Plaintiff. While OPRA requires that this matter be decided without regard to Plaintiff's personal motivations, nevertheless, that with respect to compliance with OPRA requests our Supreme Court has observed and sternly reminds that OPRA was "**designed to foster cooperation among requestors and agencies and reasonably accommodate their interests.**" Mason v. City of Hoboken, 196 N.J. 51, 66 (2008) (emphasis added).

⁶ Plaintiff's response to the June 24, 2020 Colon email did not specifically address the First Request. Rather, and unable to avoid the obvious, Plaintiff's counsel attempted to charitably characterize the response as containing "essentially political commentary, which was at times sharp, directed at the operations of the BID, its Executive Director, and other political figures in Perth Amboy." In point of fact, at a minimum, the "commentary" actually served as proof positive of the Plaintiff's abject failure to collaborate and "to foster cooperation" between and among the requestor, the BID, its sole employee and "staff" (Executive Director/Records Custodian Colon), and "reasonably accommodate their interests" as OPRA requires. For sure, such cooperation and collaboration took on heightened need and importance with the COVID-19 overlay, attendant restrictions imposed, and relaxed compliance standards authorized by all three branches of state government. Instead, Plaintiff and its principal chose the opposite route, seizing every opportunity along the way to antagonize the process and impugn the character of the BID's records custodian in the face of the unanticipated disruptions each faced.

Colon did find some other documents that were responsive and that had been stored in the office, such as BID meeting agendas, BID Board election results, etc. Ms. Colon realized that there were agendas missing from the server storage. The missing agendas were in a hardcopy binder at the BID office. She also looked for the box that she had been told contained good standing certificates for the BID. Ms. Colon could not find such certificates, and also could not find the 2019 meeting minutes on the server and hardcopies of same were also located in the BID office.

In addition to the above, during the month of June 2020 (prior to any lawsuit being filed) and also during the first week of July, Ms. Colon continued searching for vote tallies for the 2019 BID election which could not be found on the server, but she found them in a folder at the BID office in late June when she was granted access to the office. During this month, Ms. Colon also reviewed hardcopy bank statements as well as phone bills. She printed the BID Board candidates' applications and their resumes, and redacted personal identifiers. With respect to bank statements, Ms. Colon had to ensure that the statements were reconciled with the check register that was to be produced and this was time-consuming, as it involved a previous transition from one bank to the other. Ms. Colon could only do this at the BID office at City Hall to connect to the QuickBooks server through the City-issued computer, as she could not access such server remotely. Ms. Colon understood that she did not have to do this searching and extra work under OPRA but she wanted to be thorough and responsive to the Plaintiff.

With respect to the second (and third) OPRA Requests, discussed, *infra*, which were submitted on June 9, 2020 (by way of two separate emails), items were requested in that Second Request which were in the closed and inaccessible BID office, such as Request for Proposals regarding two BID contractors and RFP responses. Also, consultations with counsel regarding these requests also took time. Plaintiff argues that Ms. Colon did not acknowledge receipt of same, but OPRA does not require such acknowledgment as also discussed below. In addition, on June 9th, Plaintiff was aware that Ms. Colon was doing her best, under extraordinary circumstances, to search and produce documents responsive to the First OPRA Request made in May. He could have asked for a receipt or confirmation, but he did not. But it did not matter because Ms. Colon indeed was working on responding to that Second OPRA Request anyway, as discussed above.

The record further revealed that the above tasks and efforts were not the only activities that Ms. Colon was busy with during the months of May, June, and July 2020. As noted, her ill and disabled close relative had been in a nursing home, and due to the COVID-19 pandemic, she decided to take that close relative home for care and protection. This took place in mid-April 2020. During the months of May, June, and July 2020 (extending thereafter), as part of her caretaking of this close relative, Ms. Colon had to engage in the following activities on a frequent, daily, and weekly basis: a) take the relative to doctor appointments; b) go to the pharmacy to pay for and pick up prescribed medication; c) provide physical therapy at home; d) cook special diet meals; e) attend to hygiene; f) assist with walking and other typical tasks of a home caretaker.

As a BID official and City employee, Ms. Colon would have been typically required to go to the BID office every work day of the week (9-5), but due to the pandemic, Ms. Colon was granted "disaster leave" which allowed her flexibility to work from home or remotely. But Ms. Colon did not take any vacation days and only took 1 personal day during this period. Ms. Colon did not stop working.

During the months of May, June, and July 2020, in addition to all of the events and circumstances described above, Ms. Colon was responding to phone calls from District business

owners who were seeking help and resources during the pandemic. Many of these businesses had closed or drastically reduced operations, and they were inquiring about New Jersey Economic Development Authority (EDA) grants and loans as well as private ones. Ms. Colon had to send these business owners information and applications. She further issued public communications on a weekly basis and sometimes. These were communications Ms. Colon had to draft and receive approval from the City's Office of Emergency Management (OEM) before sending. Also, Ms. Colon was required to participate virtually in OEM weekly meetings. She also helped coordinate a special, small business grant program for business owners within the District together with the City's Office of Economic and Community Development (OECD).

During this time, Ms. Colon regularly communicated with and reported about her activities to the BID's Chair, Vice-Chair, Secretary and Treasurer. She also created, developed, implemented, and carried out a BID program for those businesses that would be reopening if and when the State of New Jersey allowed re-openings. The features of the program included grants; a collaboration with the local medical center for access to COVID-19 testing for business owners (and their employees) within the District; conduct an "open air" guidance session for personal care business owners (e.g. hair styling salons) on how to safely reopen; designed, created and printed posters for business owners alerting customers of COVID-19 safety guidelines [Ms. Colon distributed posters within the District]; and developed and created an online application for an outdoor dining program for restaurants located within the District (including various orientation virtual meetings for restaurant owners).

In addition, Ms. Colon (on behalf of the BID) collaborated with a local non-profit and the City to develop and carry out a City-wide food distribution program for families who needed groceries and household during the pandemic. Ms. Colon participated in the development of a website for the effort; and coordinated and assisted with the fundraising of over \$100,000 to provide these items for the families in need. This effort involved virtual meetings, phone calls and emails. During this 3-month period, Ms. Colon also worked on behalf of the BID in collaboration with OECD to develop a mural project where local artists would submit proposed mural art to be painted within the District. In addition, Ms. Colon had to continue gathering, reviewing, and working on 2019 pending facade grant applications submitted to the BID.

The BID held only two (2) public meetings during this time: June 9th and July 30th. Preparing for these public meetings took time and effort, as they required consultations with the executive committee of the BID, developing an agenda, consultations with counsel, issuance and compliance of public notices under the Open Public Meetings Act.

On July 8, 2020, Ms. Colon provided a response to the Plaintiff's Second OPRA Request and provided him with the responsive documents ("First Response"). The First Response provided access to many of the documents requested by Plaintiff; provided some records with redactions; and denied access to others. The Court's discussion of the BID's response is limited to those documents or requests that remain in dispute, and as were **bolded** at pp. 13, 14 and 15, supra.

Regarding Request 6 for "A current list of the BID board members, their dates of election, class of office and expiration of term (and copy of board member application and resume for each member), Defendants disclosed copies of the resumes of BID Board members, but redacted "qualifications not relevant for the position of BID Board Member" and "personal and private

identifiers.” The redacted information generally consisted of home addresses and telephone numbers.⁷

Regarding Request 21, which was for the job application of Colon, Defendants produced Colon’s resume but redacted her home address, email address and personal phone number.

Requests 26, 27, 28 and 29 focused on emails and text messages. Request 26 asked for all emails in the email account of Colon from January 1, 2020 to February 1, 2020. Request 27 asked for all “eMails in the eMail account of Noelia Colon from 1/1/2020 - 2/1/2020.” Request 27 asked for “All eMails in the eMail account of Noelia Colon between Noelia Colon and any official, personnel, contractor, agent, officer, employee, attorney or accountant of the Jewish Renaissance Medical Center, Jewish Renaissance Foundation, and any other related entity (since becoming BID Exec. Dir.)” Request 28 asked for “[a]ll eMails in the eMail account of Noelia Colon between Noelia Colon and any official, personnel, contractor, agent, officer, employee, attorney or accountant of the Perth Amboy Young Men’s Christian Association, Steve Jobin, and any other related entity (since becoming BID Exec. Dir.).” Request 29 asked for “Any SMS, iMessage, Text Message or other such form of typed cellular communication between Noelia Colon and the Mayor of Perth Amboy (whether on a city or personal phone) for the period of 1/1/2020 - 2/1/2020.”

Defendants denied access to these emails and text messages on the basis that Requests 26, 27, 28 and 29 were “overbroad”, “ambiguous” and “invalid.”

C. Plaintiff’s Second OPRA Request.

On June 9, 2020, Plaintiff emailed two (2) additional OPRA requests to Colon (“Second OPRA Request”)⁸ in which they asked for copies of the following public records: all RFPs, bid documents, proposals, insurance certificates, signed contracts and records of payment since January 1, 2017 for Carlixto’s Landscaping and Construction Services, Noemi’s Camera, Veronica Pacheco, Essential Communications, LLC and Norris McLaughlin, P.A. Defendants allegedly did not respond to this OPRA request.

⁷ In lieu of testifying in person, BID Board Member Lisette Lebron executed an un rebutted certification in which she stated that she objected to the release of her home address and unlisted telephone number contained in her application to be considered and nominated as a Board member of the BID. Lebron stated that she never intended or expected her personal information to be made public. The application she completed was silent regarding whether personal information disclosed therein would be disclosed to the public. Although Defendants have conceded that the BID is subject to OPRA, Lebron certified that she “would not have imagined that the Board membership applications would be public records.” Had she known her application was disclosable as a public record, she would not have provided her home address and telephone number. Lebron also (rather nebulously) stated that because “there has been at least one prominent case this year in New Jersey of criminal activity occurring by strangers visiting private homes.” She certified she has a “great expectation of privacy” regarding her home address and unlisted telephone number.” (Nov. 4, 2020 Certification of Lisette Lebron, ¶¶ 2-4).

⁸ The June 9th request was the second request made after the First OPRA Request of May 12, 2020, but contained two additional requests. For ease of reference, these two additional requests are collectively referred to herein as the “Second OPRA Request”.

On June 29, 2020, Plaintiff transmitted a follow-up email to Colon in which they wrote: "Dear Noelia, This OPRA request was sent 6/9/20. To date, you have refused to respond. Please advise as to the status. Thank you." Plaintiff never received a response to this email.

On July 8, 2020, Plaintiff filed the Second Action. As it did regarding the First Action, Plaintiff emailed a copy of the papers filed by Plaintiff in the Second Action on July 8, 2020.

On July 10, 2020, Colon emailed her response to Plaintiff's Second OPRA Request to Plaintiff. Regarding every item requested in the Second OPRA Request, Colon either provided responsive documents or advised that no responsive documents existed. In contrast to the First Request, in which Plaintiff has challenged redactions and the withholding of records, Plaintiff has not asserted that Colon's production of records has been deficient.

Ms. Colon certified that with respect to the Second OPRA Request, items requested therein were in the closed and inaccessible BID office, such as Request for Proposals regarding two BID contractors and RFP Responses. On top of all of the above circumstances and during this time, Plaintiff submitted a total of seven OPRA requests and, as argued in the papers filed with the Court and at oral argument, its principal, Jeremy Baratta, essentially began a harassment campaign against Ms. Colon, including appearing at various Council meetings and sending insulting emails to Bid Board members, her colleagues, the City Council, the City's administration, and the press wrongfully attacking, excoriating, embarrassing, and slandering Ms. Colon.⁹

The BID and Ms. Colon never denied Plaintiff the right to receive a response and it was Ms. Colon's intention at all times, in good faith, to locate the documents requested and produce them to Plaintiff, which she ultimately did, regardless of and not because of the lawsuits filed. Despite his vitriolic and public attacks against Ms. Colon, Ms. Colon respected Plaintiff's rights under OPRA. Ms. Colon communicated with Plaintiff several times to inform him that she was working on the OPRA Requests, and at all times she acted in a civil and professional manner.

Ms. Colon tried in good faith and with the best diligence within the circumstances to respond timely to the Plaintiff's OPRA Request. At no time did Ms. Colon knowingly or willfully violated OPRA and never unreasonably denied access to the Plaintiff to the records in question under the totality of these difficult circumstances.

⁹ On this score, however, it bears mentioning that on June 18, 2020, Peter J. King, Perth Amboy's Director of Law, concluded that Mr. Baratta's communications with the City, including to Ms. Colon, were "sarcastic and mean-spirited" but did not "rise to the level of threats that we can refer to either the police and/or civilly bring to court." King also reminded Perth Amboy that the City has "to respond to [Baratta's] OPRA requests under the law." It did not go unnoticed by the Court that the same Mr. King has represented and defended Ms. Colon in her personal capacity in these consolidated actions.

IV. Questions Presented.

The specific questions presented for resolution in these consolidated matters were explicitly framed and set forth in the Court's Order of September 4, 2020, and are repeated verbatim herein as follows:

Issue 1: Were the Plaintiff's OPRA requests of 05-12-20 and 06-09-20 "denied" or "deemed denied" under N.J.S.A. 47:1A-6?

Issue 2: Did the Defendants alleged failures to provide access to the public records sought – "as soon as possible" – within the meaning and intendment of the 2020 amendment to N.J.S.A. 47:1A-5(i)(2) (the "March 20, 2020 Amendment"), constitute a "denial" or could they be "deemed a denial" of the OPRA requests?

Issue 3: Did the Defendants exercise "reasonable efforts" to respond to the 05-12-20 and 06-09-20 OPRA requests for access "as soon as possible" and under the totality of the circumstances presented, and within the meaning and intendment of the March 20, 2020 Amendment?

Issue 4: Were the delays in responding to the 05-12-20 and 06-09-20 OPRA requests excusable under Governor Murphy's Executive Order 103 (and successive extensions thereof on April 7, May 6, June 4 and July 2) and the March 20, 2020 Amendment?

Issue 5: Did the Defendants properly respond to Request No. 6 and Request Nos. 26, 27, 28 and 29 of the 05-12-20 OPRA Request?

Issue 6: Was the Plaintiff's filing of suit on 07-08-20 in Dkt. No. MID-L-4548-20 the "catalyst" for the Defendants' compliance with the 06-09-20 OPRA requests given the Defendants compliance with the same on 07-10-20 as would warrant the imposition of attorneys' fees under N.J.S.A. 47:1A-6?

Issue 7: Does the Court have the discretion to retroactively grant the Defendants equitable extensions of time, *nunc pro tunc*, to have complied with the 05-12-20 and 06-09-20 OPRA requests through the vehicle of this litigation in furtherance of the "Notice to the Bar" issued and posted on April 24, 2020 and the pertinent provisions of the applicable, successive "*Omnibus Orders on Court Operations and Legal Practice*" in effect at the time of the service of those OPRA requests, as well as before and after the filing the two suits in this consolidated matter on June 29, 2020 and July 8, 2020, and as remain in effect of as this date?

After the hearing conducted on February 2, 2021, the Court also directed the parties to submit proposed findings of fact and conclusions of law, and to therein address the burden of proof in OPRA cases and thus additional this additional issue:

Issue 8: Which party has the burden of proof? What standard of proof applies?

V. The Court's Analysis and Discussion of the Applicable Law; Conclusions.

Standards of Review

In a departure from the general rule in civil matters that the plaintiff bears the burden of proof, in OPRA cases, the burden of proof is on the public agency to justify any denial of access. "As further expansion of the public's right of access, OPRA places the burden of proof on the government to show that a requested record may be withheld under an exemption or exclusion from the disclosure requirement." Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1, 7 (App. Div. 2009), aff'd o.b., 201 N.J. 5 (2010).

Regarding whom bears the burden of proof under the "catalyst" theory, Plaintiff here bears the burden of proof to show that "their lawsuit was causally related to securing the relief obtained and that the relief granted had some basis in law." Mason, 196 N.J. at 57. However, "when an agency has not responded at all to a request within seven business days, the burden of proof shifts to the government agency." Id.

The burden of proof in OPRA cases is the preponderance of evidence standard. Smith v. Hudson County Register, 411 N.J. Super. 538, 572-73 (App. Div. 2010) (applying to OPRA the general rule that "the preponderance of evidence standard applies in civil actions") (citation omitted). However, as to Plaintiff's request that the Court impose a civil penalty on Colon, Plaintiff bears the burden to show by *clear and convincing evidence* that Colon should be penalized.

Finally, the Defendants' cross-motions sought to dismiss the Plaintiff's Verified Complaints in each of these consolidated matters pursuant to R. 4:6-2(e). In reviewing a motion to dismiss for failure to state a claim under R. 4:6-2(e), the standard of review is whether the complaint fails to articulate a legal basis entitling the plaintiff to relief. It requires the Court to "search the complaint in depth with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of a claim, opportunity being given to amend necessary." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)(citing to Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). Every reasonable inference is therefore accorded the plaintiff and the motion is granted only in rare instances and ordinarily without prejudice. Even at this stage of the litigation, the court is not concerned with the ability of plaintiff to prove the allegations contained in the complaint. Ibid.

A motion to dismiss for failure to state a claim must be granted only if even a "painstaking" and "generous" reading of the allegation does not provide a legal basis for recovery. Printing Mart-Morristown, *supra*. See also Camden County Energy Recovery Assoc. v. NJDEP, 320 N.J. Super. 59, 64-65 (App. Div. 1999), aff'd, 170 N.J. 246 (2001). "[I]f a generous reading of the allegations

merely suggests a cause of action, the complaint will withstand the motion [to dismiss].” F.G. MacDonell, 150 N.J. 550, 556 (1997). On the one hand, then a complaint should not be dismissed under R. 4:6-2(e) where a cause of action is suggested by the facts and a theory of actionability may be articulated by amendment of the complaint. Pressler, Current N.J. Court Rules, comment 4.11 on R. 4:6-2 (2014) (citing Printing Mart-Morristown, 116 N.J. at 746). On the other hand, however, if the complaint states no legal basis for relief and discovery would not provide one, dismissal of the complaint is appropriate. Energy Rec. v. Dept. of Env. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff’d o.b. 170 N.J. 246 (2001). “Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.” Camden County Energy Recovery Assoc. v. NJDEP, 320 N.J. Super., supra, at 64.

However, in deciding a motion to dismiss under R. 4:6-2(e), the Court may consider not only the allegations in the complaint, but exhibits attached to the complaint, matters of public record, and documents that form the basis of the plaintiff’s claim. See Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458 (App. Div. 2015); Lum v. Bank of America, 361 F.3d 217, 222 (3d Cir. 2004). But, where a plaintiff presents factual material in opposition to a R. 4:6-2 dismissal motion and the judge does not exclude it, the motion becomes one for summary judgment. R. 4:6-2. Albrecht v. Correctional Medical Services, Inc., 422 N.J. Super. 265, 268-69 (App. Div. 2011). Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:6-2(c); id.

The New Jersey Supreme Court revisited this application of the summary judgment standard in Brill v. The Guardian Life Insurance Company of America, 142 N.J. 520 (1995) holding that when deciding a motion for summary judgment under R. 4:6-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party. Id. at 523.

In so holding, Brill noted that the plain language of R. 4:6-2 dictates that where a party opposing summary judgment points only to disputed issues of facts that are of an insubstantial nature, the proper disposition is summary judgment. Id. at 529. The Court further instructed, “[t]he import of our holding is that when the evidence **is so one-sided that one party must prevail as a matter of law**, the trial court should not hesitate to grant summary judgment.” Id. at 540 (citations omitted).

Finally, in any application seeking relief by way of summary action pursuant to R. 4:67-1 and 2(a) – as sought by the Plaintiff in each of its Verified Complaints in these consolidated matters, and the cross-motions to dismiss filed on behalf of the Defendants – R. 4:67-5 embeds the summary judgment standard and thus provides, in pertinent part, as follows:

4:67-5. Hearing; Judgment; Briefs

The court shall try the action on the return day, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits show palpably¹⁰ that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If a party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment. At the hearing or on motion at any stage of the action, the court for good cause shown may order the action to proceed as in a plenary action wherein a summons has been issued, in which case the defendant, if not already having done so, shall file an answer to the complaint within 35 days after the date of the order or within such other time as the court therein directs. In contested actions, briefs shall be submitted.

(Emphasis added).

In this case, in addition and subsequent to the filing of their cross-motions to dismiss, the Defendants filed an Answer to the Plaintiff's Verified Complaint in Dkt. No. MID-L-4356-20 on July 15, 2020, and an Answer to the Plaintiff's Verified Complaint in Dkt. No. MID-L-4548-20 on July 16, 2020. Following the hearing of the initial return date and entry that same day of the Court's Order of September 4, 2020, as well as completion of the limited discovery period therein allotted, the Court fixed and tried the action of the follow-up return date of February 2, 2021. The parties opted not to present witnesses for live testimony and, instead, agreed to submit on the supplemental papers and (as applicable to the Defendants) additional affidavits presented to the Court. As noted, following the Court's receipt and review of the parties' follow-up post-hearing submissions, the record was closed and as of March 24, 2021. Applying the standards set forth in R. 4:46-2(c) and R. 4:67-5 to the pleadings and affidavits of the parties, the Court now resolves the contested issues and those framed by the Court, and concludes as follows.

As to the Issues Presented – The Court's Conclusions of Law.

**A. Defendants made "reasonable efforts" to provide access "as soon as possible."
[As to **Issues #1, 2, 3**]**

For the reasons that follow, the Court concludes that Ms. Colon on behalf of the BID exercised "reasonable efforts" to provide Plaintiff access to the public records "as soon as possible" and exercised "reasonable efforts" to respond to the May 12, 2020 and June 9, 2020 OPRA Requests under the totality of the circumstances presented and within the meaning of the March 20, 2020 amendment to N.J.S.A. 47:1A-5(i)(2) ("the OPRA Amendment"). Thus, Plaintiff's May

¹⁰ The term "palpable", as a noun, has been defined to mean "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Black's Law Dictionary, Sixth Edition*. The term "palpably", as an adverb, has been defined to mean "in a way that is so obvious that it can easily be seen or known, or (of a feeling) in a way that is so strong that it seems as if it can be physically felt." *Cambridge Dictionary*.

12, 2020 OPRA Request (“May 12th Request”) and June 9, 2020 OPRA Request (“June 9th Request”) were not “denied” or “deemed denied” under N.J.S.A. 47:1A-6.

Generally speaking, in pre-COVID-19 times, OPRA imposes an obligation on a custodian of government records to grant or deny “access to a government record as soon as possible, but not later than seven business days after receiving the request.” N.J.S.A. 47:1A-5(i)(1) states: “[i]n the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request.” N.J.S.A. 47:1A-5(i)(1). However, on March 20, 2020, the New Jersey Legislature on an emergent basis amended the OPRA deadlines in N.J.S.A. 47:1A-5(i) to provide relief to OPRA custodians as a result of the state of emergency caused by the Covid-19 pandemic. N.J.S.A. 47:1A-5(i)(2). N.J.S.A. 47:1A-5(i)(2) was amended to state:

During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

N.J.S.A. 47:1A-5(i)(2) (emphasis added).

Neither the BID nor Ms. Colon ever told Plaintiff that Plaintiff’s OPRA requests were denied. Ms. Colon simply required additional time to gather documents responsive to Plaintiff’s requests given the extraordinary circumstances caused by the pandemic. In fact, on June 3, 2020, Ms. Colon emailed Plaintiff stating: “Some of your requests have taken longer to search for and identify. I can assure you that you will receive a response to your requests, and they will be provided as soon as possible as circumstances permit, pursuant to the above-mentioned OPRA amendment.” Then again on June 5, 2020, Ms. Colon communicated to Plaintiff that: “Once again, we assure you that you will receive a response to your OPRA request as soon as possible.”

The four (4) Certifications presented of Noelia Colon, together with the Certification of Frank Hoffman, are evidential and compellingly establish that Defendants engaged in reasonable efforts, as soon as it was possible, to respond to Plaintiff’s OPRA Requests as contemplated and required by the OPRA Amendment, all *within the unprecedented and very difficult circumstances Ms. Colon found herself in*. She carefully, and as soon as she could, worked on researching, gathering and preparing the responses, including consultations with BID counsel; consultations with a previous BID Executive Director; facing a pandemic, taking care of her ill relative, dealing with the blockage of the BID office and the lack of easy access to some of the records. Yet, Ms. Colon responded to both requests at issue in this Action, and there was never any “denial” or “deemed denial”.

In these wholly unforeseen and unprecedented times, all three branches of New Jersey government: the Executive, the Legislature and the Judiciary, wisely and prudently agreed on many things, but one in particular impacts adjudication of this case: reasonableness, prudence,

understanding and flexibility must be applied at all levels of government. From closure of public buildings to stay-at-home mandates to tolling of statutes of limitation, the overriding public policy of New Jersey and all of the United States was to prioritize fighting and slowing down Covid-19 everywhere. Across the three branches of government, deadlines were cancelled, suspended, extended, tolled and/or adjusted.

Toward those ends, on March 26, 2020, in a Special Statement issued by the Government Records Council (“GRC”), the administrative tribunal in the Department of Community Affairs which oversees OPRA—issued 6 days after the OPRA pandemic Amendment—the GRC noted that when the public agency office is closed to the public—as City Hall and the BID office were from March 16th through July 8th, 2020—those closed days should not even be counted in calculating the deadlines, in light of the existing “extenuating circumstances”. If this matter had been filed with the GRC, the deadline to respond to Plaintiff’s three OPRA requests would have been **July 17, 2020**, and yet Ms. Colon provided the responses to Plaintiff on **July 8th and July 10th—meeting that deadline**. And, the Special Statement details many of the same extenuating circumstances Ms. Colon faced. Even the regulatory OPRA administrative agency and tribunal recognized the need for flexibility and empathy with the situation Ms. Colon found herself in. Even if Ms. Colon performed some work at home, access to many records were in the BID office which was inaccessible.

There was no “denial” or “deemed denial” of the Second OPRA Request merely because Ms. Colon did not “acknowledge” receiving the request. There is no requirement in OPRA that the request be confirmed as “received” or “acknowledged” once lodged. She responded to the request by producing documents. The evidence shows that Ms. Colon was working on responding to the Second OPRA Request as well during this time, looking on June 30, 2020 for records involving contractor Request for Proposals and responses thereto—all located in the BID office which had been inaccessible to her during the 29 days preceding days of June.

Given: the pandemic; limited access to City Hall; the stay-at-home statewide directive; disaster leave; the construction at City Hall and blockage of the BID office; Ms. Colon’s personal and private close relative health matter; the fact that the BID has no person or staff to respond to this OPRA Request other than Ms. Colon; and the broad scope of Plaintiff’s 29 requests (and the fact that Ms. Colon was only at this job for nearly 9 months, which required Ms. Colon to search for records and information that long preceded her tenure at the BID), Ms. Colon did not violate OPRA and the evidence shows the Defendants did not violate OPRA.

The Court concludes, and thus holds, that the Defendants fell within the protection of the OPRA Amendment, as the normal deadlines **did not apply**. The Defendants did, indeed, make a reasonable effort, as the circumstances permitted, to respond to the two OPRA Requests within seven business days or as soon as possible thereafter.

Since City Hall and the BID office were closed and inaccessible under all the circumstances presented, per the March 26, 2020 GRC Statement referred to above, in harmony with the flexible and relaxed deadlines policies of the Executive Branch, the Legislature (via the OPRA Amendment) and the Judicial Branch of government during the pandemic, the deadlines to respond to the two OPRA Requests did not begin running until July 8, 2020, when City Hall was opened to the public.

Plaintiff argues that this closure of the BID office was “bureaucratic” and not related to the pandemic and thus, should not be considered as a factor. However, Plaintiff presents no proof that the blockage was not due or aggravated by the pandemic. The Certification of Frank Hoffman, Director of Public Works, submitted by Defendants, confirmed that the City of Perth Amboy obviously took advantage of the closure of City Hall to use or continue offices regular offices like the BID’s office attended by employees and the public as storage areas to support the ongoing construction. Clearly, this was not an ordinary situation. The closure of City Hall was due to the pandemic state of emergency, and the use of the BID office during this closure period, clearly was aggravated due to the pandemic.

Furthermore, it is the COVID-19 pandemic which caused Ms. Colon to be on “disaster leave” confined at home for some days both working remotely and taking care of her ill relative. She could not have expected to go to City Hall to unblock the office herself when neither Mr. Carr nor Mr. Hoffman granted access. The BID had no legal authority or power to force the City to divert attention from the pandemic to opening the BID’s office. Thus, in the Court’s view, Plaintiff’s argument that the closure of the BID office should be disregarded as “bureaucratic” is baseless and without merit.

The GRC Special Statement was issued to provide “guidance on the effects of work disruptions and potential closures due to Covid-19.” The GRC has consistently interpreted the term “business days” to mean those days on which a “public agency” is open for “regular business hours.” The term “business days” does not include weekends, holidays, and regular or emergency closures. (Guadalupe Cert., Exhibit B) (emphasis added). Along these lines, the GRC in its Special Statement found: when a “public agency is closed on an emergency basis and is not open for ‘regular business hours,’ whether in the short or long-term, it is reasonable to conclude that those days on which the agency is closed is not included in the statutory response time frame.” (Guadalupe Cert., Exhibit B) (emphasis added).

GRC’s analysis included recognition of “extenuating circumstances.” The GRC found that those circumstances would include, but not be limited to, “retrieval of records that are in storage or archived (especially if at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the public agency, or the public agency’s need to reallocate resources to a higher priority due to force majeure.” (Guadalupe Cert., Exhibit B).

The GRC issued the Special Statement only six (6) days *after* the OPRA Amendment was passed by the New Jersey Legislature and five days after Governor Murphy issued Executive Order 107 (the stay-at-home directive). While the Court is not bound by the GRC Statement or GRC’s determinations, as the Executive Branch agency overseeing OPRA in New Jersey (and administratively adjudicating OPRA disputes), its March 26, 2020 Statement is persuasive and, ultimately, informs this Court’s decision in material part. Although Ms. Colon was able to do some work from home, the evidence record shows that many documents and records were located at the closed BID office within the closed City Hall.

The GRC’s rationale makes sense because if a public building is closed, even if opened on a limited basis to employees, prudent government policy requires that employees like Ms. Colon not be compelled and forced to risk her health (and that of her close, ill relative whom she was caring for at home) by going to City Hall (and catch COVID from other employees) to look for

records in order to comply with OPRA and avoid a violation of OPRA and its penalties. This is totally the opposite of a “bureaucratic” impediment; this was a serious public health emergency and Ms. Colon’s “disaster leave” status—granted to her by City government—excused her and absolved her from having to go to City Hall to look for records. The evidence is compelling that many records were in the BID office and, importantly, financial records in QuickBooks were in that inaccessible BID office in a City-issued computer that she could not connect remotely to.

Thus, it was quite reasonable, prudent and fair for the Legislature to state in the OPRA Amendment that the pre-pandemic OPRA deadlines did not apply and for the Executive Branch (via the GRC) to announce that if the public building where the agency is located is closed due to the pandemic, the OPRA clock stops ticking.

As such, Defendants cannot, should not, and will not be held liable for violating OPRA since, in the Court’s view, they fall squarely under and within the safe-harbor created by the OPRA Amendment.

B. The Defendants’ obligation to meet the OPRA deadlines was tolled under Governor Murphy’s Executive Orders. [As to Issue #4].

On March 9, 2020, Governor Murphy issued Executive Order 103, which declared a State of Emergency and Public Health Emergency in New Jersey. Since then, and at all times relevant to the matters in issue here, Executive Order 103 was extended for an additional thirty days respectively on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, and on October 24, 2020 (and thereafter).

Governor Murphy issued Executive Order 107 dated March 21, 2020, which, *inter alia*, required all New Jersey residents to remain at home or their place of residence with limited exceptions. Further, paragraph 10 of Executive Order 107 encouraged workers to “telework.” In relevant part, Executive Order 107 stated: “All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, “telework” means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.”

The above stay-at-home mandate was extended by Executive Orders 119 (April 7, 2020), 138 (May 6, 2020), 151 (June 4, 2020), 162 (July 2, 2020), all New Jersey residents were ordered to remain at home by Governor Murphy.

At the local level in Perth Amboy, on March 16, 2020, Mayor Wilda Diaz and the Office of Emergency Management declared a State of Emergency for the City of Perth Amboy. From March 16, 2020 through July 8, 2020, City Hall was closed to the public. City Hall was open to employees on a limited basis, but the City encouraged all employees to stay and work from home as much as possible (as Governor Murphy had ordered).

At the heart of the issues raised by the Plaintiff’s Verified Complaints, on March 26, 2020, the Government Records Council (“GRC”) - the administrative tribunal in the Department of Community Affairs, which oversees OPRA - issued a Special Statement on the Amendment and

COVID-19's impact on OPRA. The Special Statement was issued to provide "guidance on the effects of work disruptions and potential closures due to Covid-19."

The GRC has consistently interpreted the term "business days" to mean those days on which a "public agency" is open for "regular business hours." The term "business days" does not include weekends, holidays, and **regular or emergency closures**. To the foreign end, the GRC in its Special Statement found: when a "public agency is closed on an emergency basis and is not open for 'regular business hours,' whether in the short or long-term, it is reasonable to conclude that those days on which the agency is closed is not included in the statutory response time frame."

The GRC's analysis included recognition of "extenuating circumstances." The GRC found that those circumstances would include, but not be limited to, "retrieval of records that are in storage or archived (especially if at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the public agency, or the public agency's need to reallocate resources to a higher priority due to force majeure.

Notably, the GRC issued the Special Statement only six days after the OPRA Amendment was passed by the New Jersey Legislature on March 20, 2020 and merely five days after Governor Murphy issued Executive Order 107 (the stay-at-home directive) on March 21, 2021.

The OPRA Amendment and the Governor's Executive Orders, correctly interpreted by the GRC, cancelled and postponed the pre-pandemic deadlines (the deadlines "do not apply") to respond to Plaintiff's First and Second OPRA Requests because City Hall was closed and the directive from New Jersey's Executive to the public, including employees of the City of Perth Amboy like Ms. Colon, was to stay at home or work remotely and not go to City Hall. Here, the BID office at City Hall was not only closed to the public, but it was also inaccessible to Ms. Colon, and the Defendants made a clear showing that records and documents pertaining to and responsive to both the First and Second OPRA Requests were inaccessible inside the blocked BID office. But despite that inaccessibility, Ms. Colon kept working to respond to the OPRA requests as best and reasonably as the circumstances permitted.

In the Court's view, under these circumstances, it makes sense in the interest of fairness and justice to exclude the days that the Perth Amboy City Hall was closed (and the BID office blocked) in the calculation of when responses to Plaintiff's OPRA Requests were really due. The deadline to respond to Plaintiff's three (3) OPRA requests would have been July 17, 2020, and Ms. Colon provided the responses to Plaintiff on July 8th and July 10th—**meeting that adjusted deadline**. Even if one were to not apply a "tolling" or "suspension," the responses to the two OPRA Requests were produced for the First Request--32 business days from the extended June 5th 2020 deadline (7 business days plus a 10 business day extension granted by Plaintiff on his May 12th Request.); and for the Second Request--15 business days (June 18th through July 10th). Given the pandemic and the Executive Orders, **this was not a delay**.

In light of the Executive Orders and the Governor's mandate to stay at home (and the City's disaster leave policy), and given Ms. Colon's good faith and dedicated, reasonable efforts to respond to the two OPRA Requests (even though she could have legitimately taken the position that the OPRA responses were not due until after City Hall reopened, per the Governor's Executive Orders and the GRC Statement), and even if the OPRA deadlines were not effectively tolled or suspended, the

above 32 and 15 day hypothetical “delays” were excusable and not actionable. Thus, it would be inequitable and unfair to impose any penalty on Ms. Colon or find that the OPRA Requests were either “denied” (which they never actually were) or “deemed denied” (which would be unconscionable to find under the unique and unprecedented circumstances presented).

C. The Defendants properly responded to Plaintiff’s OPRA Request Nos. 6, 26, 27, 28 and 29 of the 05-12-20 First OPRA Request. [As to Issue #5].

For the reasons that follow, the Court concludes that the Defendants properly responded to the May 12, 2020 OPRA Request Nos. 6, 26, 27, 28, and 29.¹¹

The Plaintiff claims that it is entitled to “All” emails, iMessages, SMS Messages and text messages requested in First OPRA Request nos. 26, 27, 28 and 29. The requests for “All” emails and texts and not identifying the source of the email accounts, or any subject matter or content, and not providing specificity or narrowing the scope, Plaintiff made invalid and improper requests. The BID’s responses to Requests Nos. 26, 27, 28 and 29 that they were overbroad and invalid were proper.

Request Nos. 26, 27, 28 ask for “all emails” in “the eMail account of Noelia Colon” without specifying which account (private, government, all accounts, some accounts, any account?) and without any subject matter. All three are blanket requests. Request No. 29 asks for “Any” SMS, iMessage, Text Message “or other form of typed cellular communication” “whether on a city or personal phone.” This was another blanket request without subject matter and worse, this one sought to intrude upon Ms. Colon’s personal cell phone.

The Plaintiff’s requests above are even broader and all-encompassing than the requests denied by three different Appellate Division panels in three cases.

For example, in MAG Entertainment, LLC. v. Division of Alcoholic Beverage Control, *supra*, the requestor asked for “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” 375 N.J. Super. at 539-540. These requests are obviously a lot more detailed than those of Plaintiff here, and yet the Appellate Division held that they “failed to identify with any specificity or particularity the governmental records sought” requiring the agency to manually search through the agency’s files, analyze, compile and collate the information. *Id.* at 549.

¹¹ As previously noted, regarding Request 21, which was for the job application of Colon, Defendants produced Colon’s resume but redacted her home address, email address and personal phone number. For the same reasons advanced, *infra*, in regard to the similar requests made of individual BID Board members, the Court concludes that the BID’s response to this request was proper.

In Bent v. Township of Stafford Poice Dept. Custodian of Records, 381 N.J. Super. 30 (App. Div. 2005), a citizen made an OPRA request for the “entire file” of his criminal investigation conducted by a township and the US Attorney including items listed in subparts “a” through “e”. After the Township refused to provide further documents other than as to requests “a” and “d”, the citizen filed a complaint with the Government Records Council (“GRC”) claiming he wanted the entire file. In affirming the dismissal of his complaint by the GRC, the Appellate Division held that this was an unauthorized “blanket request” and that an OPRA request seeking “general information to support his unsubstantiated claim of police misconduct” is not a valid OPRA request. 381 N.J. Super. at 39. Here, like the citizen in Bent, in his email to Ms. Colon dated June 3, 2020, Plaintiff’s principal, Baratta, makes outrageous and unfounded accusations against the BID about alleged mismanagement and even corruption. The broad “All” emails and texts requests above are exactly blanket requests seeking “general information to support his unsubstantiated claim” which were rejected by the Appellate Division in Bent, and will be denied (as they should) and rejected here.

In New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), the requestor filed an OPRA request with the Council on Affordable Housing containing 39 separate requests including a request for “any and all documents and data” pertaining to COAH’s determinations about fair-share housing obligations. In affirming the trial court’s denial of relief to the requestor, the Appellate Division noted that OPRA does not contemplate “wholesale requests for general information to be analyzed, collated and compiled...”[citing to MAG] 390 N.J. Super. at 177.

Here, and in the Court’s view, the above requests were and are wholesale, blanket and all-encompassing, and the BID’s objections and responses to them for the reasons given were proper and valid under OPRA.

In connection with Plaintiff’s efforts to obtain home addresses, Defendants submitted to the Court the November 4, 2020 Certification of Lisett Lebron. Ms. Lebron is a member of the BID Board of Directors. When Ms. Lebron submitted her application to be considered and nominated as a Board member of the BID, she never intended or expected that her home address and unlisted phone number would be disclosed to the public or become a public record. The BID’s application which she completed did not indicate or state at the time that their home addresses and unlisted phone numbers would become public records. Otherwise, she would not have provided this information or consented to its disclosure. Ms. Lebron understood that the BID is a federal tax-exempt, non-profit corporation and not a public agency, and as such, she would not have imagined that the Board membership applications would be public records.

In Ms. Lebron’s Certification she details how she has a great expectation of privacy in regard to her home address and personal unlisted number as there has been at least one prominent case this year in New Jersey of criminal activity occurring by strangers visiting private homes. Ms. Lebron states: “I highly and strongly value my privacy and security, and that of my family, and for this reason, I do not consent or agree to my home address and unlisted phone number be disclosed to the Plaintiff or anyone else without my previous consent and knowledge.”

Plaintiff relies on Bozzi v. Borough of Roselle Park, 462 N.J. Super. 415 (App. Div. 2020) (holding that names and addresses of dog owners who applied for a license are public records subject to disclosure). However, the facts of Bozzi, as discussed previously, are completely different than this case. Bozzi involved applications for pet licenses, which do not raise any privacy concerns. On the other hand, this case is more akin to the facts in Wolosky v. Somerset County, 2017 WL 1179852 (App. Div. 2017). Plaintiff fails to cite or distinguish Wolosky, which applied the factors identified in Burnett v. County of Bergen, 198 N.J. 408, 427 (2009). The Burnett factors included: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access. Burnett, 198 N.J. at 427.

Here, the BID is a Title 15 non-profit, and its volunteers are composed of businesses located in the District. As described by Ms. Lebron in her Certification, BID volunteers did not reasonably expect their home addresses, telephone numbers and email addresses would be publicly disclosed. This is why BID volunteers provided their business contact information. Because the BID Board members are volunteers, and not government officials, they do have a reasonable expectation of privacy that they will not be harassed, especially with regard to Plaintiff. And Plaintiff, through Mr. Baratta's harassing emails to Ms. Colon and conduct that is the subject of public record, has shown that there is a real-world implication and harm from disclosing personal home addresses for BID volunteers.

Put simply, Plaintiff has not articulated the need for access to this information. Plaintiff could have established contact with BID Board members and Ms. Colon through the BID, at public meetings and to the business addresses provided – again these were not redacted. Therefore, the Court concludes that the redaction of the home addresses, personal emails and unlisted phone numbers by the BID was appropriate and valid.

D. The Plaintiff does not meet the requirements of the “catalyst theory” to be entitled to legal fees. [As to Issue #6].

The “catalyst” theory was adopted and implemented by the New Jersey Supreme Court for OPRA cases in Mason v. City of Hoboken, 196 N.J. 51, 76 (2008). Mason requires that to be awarded legal fees, a requestor must demonstrate “(1) a factual causal nexus between plaintiff's litigation and the relief ultimately achieved; and (2) that the relief ultimately secured by plaintiffs had a basis in law.” Id.

On the record presented, Plaintiff did not meet the two Mason requirements. First, a factual casual nexus is not automatically established because the BID produced the responses after litigation was filed. Ms. Colon certified the responses were not provided as a reaction to the lawsuits. If anything, Ms. Colon assured Plaintiff several times that a response would be forthcoming and before any legal action was taken. Plaintiff made the OPRA Requests during the time the BID office within City Hall was closed to the public (and blocked and inaccessible) on May 12th and June 9th. July 8 was the date when Ms. Colon provided the response to the First OPRA Request and July 10 for the Second and Third OPRA Requests.

Regarding the lawsuit on the Second OPRA Request filed on June 29, 2020, and contrary to Plaintiff's argument that the lawsuit triggered the response, the evidence is clear and compelling that after the Second OPRA Request was made on June 9, 2020, Ms. Colon took steps to ask for access to the BID office and get a hold of the RFP and RFP responses which were requested by Plaintiff in the Second OPRA Request. **The lawsuit was not the trigger for the response.**

Second, the "deemed denial" relief sought by Plaintiff has no basis in law because there was no denial in the context of the recent OPRA Amendment triggered by the pandemic and given the extraordinary and difficult circumstances Ms. Colon faced. Similarly, the exemptions invoked, and objections raised by the BID in its response were and are valid and based on case law. Furthermore, actions by the three New Jersey branches of government: the Executive (including the GRC), the Legislature (via the OPRA Amendment) and the Judiciary (Supreme Court Omnibus Orders), all consistently mandated reasonableness and flexibility regarding to all deadlines and requirements (such as OPRA) imposed on public servants like Ms. Colon, and cancelled, tolled, relaxed and/or suspended all deadlines. As such, Plaintiff's claims in both lawsuits have no basis in law, as the normal pre-pandemic OPRA deadlines **do not apply.**

As a result, Plaintiff's two lawsuits consolidated here have no basis in law because they were filed as if no health state of emergency existed at all and in defiant disregard of **the relief and remedies provided by all three branches of our state government.** Plaintiff's resort to these lawsuits was precipitous given these pervasive, intervening and all-encompassing remedial actions taken by the three branches of government in unison. And worse, Plaintiff compounded the endeavor of its lawsuits by engaging in a harassment and humiliation campaign against Ms. Colon contrary to the reasonable cooperation and collaboration required by OPRA.

In Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2015), the requestor filed an OPRA request seeking copies of the notices for all council meetings during a specified period of time for 2014 and 2015. The Borough partially responded by the OPRA deadline by producing only the 2015 records but did not produce the 2014 records. Plaintiff then filed suit two weeks later. After his lawsuit was filed, the Borough produced the 2014 records. The court looked at the circumstances which led to this sequence of events and found that the Borough had inadvertently failed to produce the 2014 records and that there was no ill will or malice. Id. at 520. What the court explained regarding expected reasonable cooperation between a requestor and the agency is quite relevant to the consolidated matters at hand here:

It would not serve the purposes of OPRA to award attorney's fees in this case. OPRA envisions cooperation between requestors and government agencies. Id. at 78. The very language of the statute contemplates collaboration between the two. See N.J.S.A. 47:1A-5(g) ("[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency" (emphasis added)). See also Mason, supra, 196 N.J. at 78 (discussing this statute as an example of working together to promote access to records). The New Jersey Supreme Court has also looked favorably upon allowing custodians and requesting parties to agree to extend the seven-business-day response deadline imposed on the government by OPRA. See ibid. (referencing a decision of the Government Records Council).

It is clear from the record that the requesting party, plaintiff, made no attempt to cooperate or work with defendants in order to acquire the 2014 records. Exactly two weeks after receiving the letter from defendants with the documents regarding the 2015 council meetings, and doing nothing in between, plaintiff filed the present lawsuit.

Id. (emphasis added).

In like vein, Plaintiff here made absolutely no attempt whatsoever to cooperate, collaborate with, or offer assistance to Ms. Colon to resolve the obstacles she faced. Instead, Plaintiff, through its principal, launched a tirade of abusive and insulting comments against Ms. Colon, threatening legal action every step of the way and even explicitly stating that it intended to bring legal action to make it a blotch on Ms. Colon's career for the "rest of her life."

For all of the above reasons, the Plaintiff failed to satisfy the requirements of the "catalyst theory" to sustain its claim for legal fees and, therefore, that aspect of the Plaintiff's application will be denied.

E. The Court has both the equitable authority, and was specifically vested with the enhanced discretion, to find that there was no OPRA violation here and pursuant to the Supreme Court's pertinent/COVID-19 induced "*Omnibus Orders on Court Operations and Legal Practice.*" [As to Issue #7].

At all times relevant here, starting on March 27, 2020 and continuing through July 23, 2020, the Supreme Court issued a number of Omnibus Orders addressing the effects of the pandemic on the New Jersey Judiciary, court operations and legal practice, particularly as to pending cases **and new cases to be filed**. Specifically, the Supreme Court's "*Omnibus Orders of Court Operations and Legal Practice,*" of March 27, 2020; April 24, 2020; May 28, 2020; June 11, 2020; June 25, 2020; July 10, 2020; and July 24, 2020, *inter alia*:

- Suspended jury trials and grand juries;
- Relaxed and extended discovery deadlines and discovery end dates until July 26, 2020;
- Extended the deadlines for filing affidavits of merit in professional malpractice cases;
- Tolerated dismissal of civil cases for lack of prosecution;
- Relaxed and extended the time to issue summonses from 15 days to 60 days of issuance of a Track Assignment Notice;
- Tolerated the service of Tort Claims Notices; and
- Importantly, the Court extended and tolled deadlines to file under applicable statutes of limitation.

When Plaintiff filed the two lawsuits at issue here, the first one on June 29, 2020, Dkt. No. MID-L-4356-20 and the second one on July 8, 2020, Dkt. No. MID-L-4548-20, **these Omnibus Orders were in full force and effect**, and due to the pandemic and the exceptional circumstances of disruption and threat to public health, critical deadlines, such as statutes of limitations, criminal proceedings and discovery deadlines were all extended. In the very first Omnibus Order of March 27, 2020, the New Jersey Supreme Court stated as follows:

In conjunction with those operational changes, the Court has entered a series of orders suspending certain court proceedings, extending deadlines, and tolling time periods **because of the practical impossibility of continuing business as usual during this public health crisis.**

(Emphasis added).

Clearly, words matter, and these were the words of the Supreme Court. This Court notes here with emphasis the Supreme Court's precise and unambiguous language: ". . . **the practical impossibility of continuing business as usual during the public health crisis.**" That is exactly what happened for the Defendants, and what the Plaintiff urges the Court to blithely ignore – and, inescapably, perhaps because Plaintiff *admitted that the purpose of this lawsuit was to create a blotch in Ms. Colon's record that would follow her "for the rest of her life."* Plaintiff simply did not care that business could not be continued as usual.

Under these Omnibus Orders – coupled with the OPRA Amendment and the Governor's Executive Orders (including GRC Statement)) - this Court had and has the power and the enhanced discretion to retroactively grant the Defendants equitable extensions of time for the actions they did take, *nunc pro tunc* (as if in time), and precisely because the Judiciary understood and acknowledged that this deadly pandemic disrupted "business as usual" that inherently required prudence, empathy, and flexibility.

More specifically, under the Supreme Court's Omnibus Order of April 24, 2020, which applies to both lawsuits filed herein (and later consolidated), this Court was entrusted with the enhanced discretion and given the authority under R. 1:1-2(a) to suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys and others in the interests of justice. The Notice to the Bar attached to the April 24, 2020 Omnibus Order provides, as that Order provided, as follows:

Requests in Individual Cases. The COVID-19 pandemic continues to affect attorneys, parties, and others, both professionally and personally. "In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice." Such individual requests for extensions may be submitted by letter in lieu of a formal motion.

(Emphasis added).

There is nothing inconsistent with the Omnibus Order provisions vesting with the trial courts the authority and discretion to, in “any individual matter consistent with Rule 1:1-2(a) . . . suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice” and the OPRA Amendment. In point of fact, they both dovetail with the Legislature’s expressed intent embedded within the specific provisions of P.L. 2020, c. 10, *i.e.*, the amendment made to N.J.S.A. 47:1A-5(i), enacted on March 20, 2020. If anything, the Court’s Omnibus Orders synchronize with and thus breathe life into the OPRA Amendment and its implementation. The Amendment states:

During a period of declared pursuant to the laws of this State as a state of emergency, public health emergency, or state or local disaster emergency, **the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of the section shall not apply**, *provided, however*, that the custodian of a government record shall make a **reasonable effort, as the circumstances permit**, to respond to a request for access to a government record within seven business days **or as soon as possible thereafter.**”

(Emphasis added).

R. 1:1-2(a)¹² and the April 24, 2020 Omnibus Order authorize and allow this Court to rule, *nunc pro tunc*, that both lawsuits filed by Plaintiff on July 8, 2020 (First OPRA Request) June 29, 2020 (Second OPRA Request) were premature and not ripe because:

- (a) As the OPRA Amendment provides, “the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph . . . shall not apply.” **Thus, since the deadlines did not apply, Plaintiff’s two lawsuits were premature as Plaintiff was relying on deadlines that did not apply.**
- (b) The 45-day prerogative writ deadline under R. 4:69 was automatically extended by the OPRA Amendment and did not start running until the government agency in question reopened to the public and responded (in this case July 8, 2020).

¹² R. 1:1-2 provides as follows:

(a) The rules in Part I through Part VIII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes and, in civil cases, consistent with the case management/trial management guidelines set forth in Appendix XX of these rules.

(Emphasis added).

The OPRA deadlines the Defendants would have normally faced - pre-COVID, pre-Executive Orders, pre-Supreme Court Omnibus Order and pre-OPRA Amendment – and as applied to the facts presented in this record were and are, as a matter of law, legally tolled by the specific terms of the OPRA Amendment (subject to the stated conditions) and/or were equitably tolled by the provisions of the Supreme Court’s Omnibus Orders when both are read *in pari materia*. And this is especially insofar as the latter explicitly vested in the trial courts the authority and enhanced discretion to suspend or extend such deadlines to “otherwise accommodate the legitimate needs of the parties, attorneys, and others in the interest of justice.” At a minimum, and toward these ends, the Plaintiff’s contention that the BID was “at peril” under the 45-day statute of limitations is simply baseless and unfounded.

Therefore, the Supreme Court’s Omnibus Orders are keenly relevant to this matter in that Plaintiff cannot seek to impose liability and penalties on the Defendants for not meeting deadlines, which this Court concludes, were cancelled, relaxed, suspended and/or tolled by synchronicity of edicts issued by all three branches of New Jersey state government.

F. Which party has the burden of proof? What standard of proof applies? [As to Issue #8].

(i). Burden and Standard with respect to the alleged “Denial” of “Deemed Denial” of the OPRA Requests.

During normal times not involving a state of emergency, with respect to the claim that there has been a denial of access or a “deemed denial” violating OPRA, the statute places the burden on the public body to prove that one or more of the exemptions or exceptions incorporated in OPRA is applicable to the requested disclosure. See N.J.S.A. 47:1A-6 (stating that a public agency bears the burden to show that “denial of access is authorized by law”); Matter of New Jersey Firemen's Association Obligation to Provide Relief Applications Under Open Public Records Act, 230 N.J. 258, 166 A.3d 1125 (2017); Tractenberg v. Township of West Orange, 416 N.J.Super. 354, 378–79, 4 A.3d 585 (App. Div. 2010) (quoting Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law. Div. 2004)).

The standard of proof the public agency must meet is a “clear showing” that the denial of access was authorized by law or an exemption applies. Asbury Park Press v. County of Monmouth, 406 N.J.Super. 1, 6, 966 A.2d 75 (App. Div. 2009); North Jersey Media Group, Inc. v. Twp of Lyndhurst, 229 N.J. 541, 555 (2017).

Since this is a case of first impression, given the extraordinary circumstances of the pandemic and the significant flexibility of the three branches of New Jersey government in cancelling, suspending, relaxing and/or tolling deadlines (as shown by the OPRA Amendment, the Executive Orders and the Supreme Court’s Omnibus Orders), it would be fair and just if the BID is required to prove by a *preponderance of the evidence* that it did not violate OPRA under the OPRA Amendment. Still, even if the Court were to find that the “clear showing” standard applies here, there is no New Jersey case equating it to the enhanced “*clear and convincing*” standard used, for example, to establish fraud. Notwithstanding, the significant record presented to the Court by the BID that included: four (4) separate Certifications of Noelia Colon, and the Certifications of Lisset Lebron and Frank Hoffman, all meet the “clear showing” standard and even the “clear

and convincing” standard (if applied at all) that there was no actionable denial or “deemed denial” and that the BID acted in accordance with and as authorized by law. The Court has already concluded as much.

Importantly, Plaintiff submitted absolutely no evidence whatsoever in the form of any Certifications, Affidavits or statements by third parties or any other competent evidence to contradict or oppose the numerous sworn statements made by Ms. Colon or the Certifications of Frank Hoffman or Lisett Lebron submitted to the Court; and this, after being accorded ample opportunity to do so, and to even present witnesses for live testimony. All Plaintiff submitted was briefing full speculation and “could have’s” and “should have’s” and certifications of its counsel.

Put simply, the Defendants met their burden of proof and, in the Court’s view, well beyond even a preponderance of the evidence and, thus, the Court re-iterates what it previously concluded: There were no violations of OPRA by either of the Defendants here.

(ii) Burden And Standard with respect to the “catalyst theory.”

The burden of proof of whether the lawsuits here were the catalysts for the disclosure and production of records is squarely and solely on Plaintiff. Mason v. City of Hoboken, 196 N.J. 51, 57 (2008); Nuckel v. New Jersey Economic Development Authority, 2020 WL 2529508 (App. Div. May 19, 2020). Given the entitlement to attorney’s fees if Plaintiff were to prevail, the standard of proof to be met by Plaintiff should also be a “clear showing” or “clear and convincing.” (There appears to be no New Jersey case addressing this question).

As discussed above, Plaintiff here did not meet its burden of proof by either a “clear showing” or by “clear and convincing” evidence that either or both lawsuits triggered the disclosure and production of documents by the BID. Plaintiff did not present any evidence, not even a Certification by its principal or by any third party, to prove clearly or convincingly that Ms. Colon only began working on the requests after the lawsuits were filed or that the lawsuits were the catalysts. To the contrary, the evidence shows that right away from May through the end of June 2020, Ms. Colon was actively working on gathering the records to produce them to Plaintiff. The evidence is clear that the lawsuits had nothing to do with her production of records and responses.

(iii) Burden and Standard with respect to the alleged “knowing” and “willful” violation(s).

As to the claim by Plaintiff that Ms. Colon willfully denied access, the burden of proof is on Plaintiff to prove a “knowing and willful” OPRA violation. Colella-Gallenthin v. Borough of Merchantville, 2007 WL 987225 at 15 (N.J. Adm. 2007). Given that the standard of proof of “clear and convincing” applies to causes of action involving knowing and willful conduct, the same enhanced standard should apply to Plaintiff here. Stochastic Decisions, Inc. v. DiDomenico, 236 N.J. Super. 388, 395 (1989), certif. denied, 121 N.J. 607 (1990).

OPRA provides as follows:

A public official, officer, employee or custodian who knowingly and willfully violates P.L. 1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, and is

found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within 10 years of an initial violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced in proceedings in accordance with the “Penalty Enforcement Law of 1999,” P.L. 1999, c. 274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section. Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.

N.J.S.A. 47:1A-11(a) (emphasis added).

A knowing and willful violation of OPRA requires actual knowledge that the actions were wrongful and a positive element of conscious wrongdoing. Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609, 619 (App. Div. 2008) (citing Fielder v. Stonack, 141 N.J. 101, 124 (1995); Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)). Willful misconduct requires “much more” than mere negligence. Fielder, 141 N.J., supra, at 124. Willful misconduct falls somewhere on the continuum between simple negligence and the intentional infliction of harm. Id. at 123 (citing Foldi v. Jeffries, 93 N.J. 533, 549 (1983)).

On this score, the Plaintiff failed to establish by *clear and convincing evidence* (or even by a preponderance, for that matter), that Ms. Colon violated OPRA knowingly or willfully. There is no evidence of willful conduct whatsoever presented by Plaintiff—only arguments by counsel without any basis in fact or law. The Court has already found that Ms. Colon did not “unreasonably den[y] access under the totality of the circumstances.”

In contrast, the voluminous record presented by Defendants shows that Ms. Colon acted as soon as possible as the circumstances permitted and engaged in reasonable efforts. Her Certifications and her emails to Plaintiff show that she was truly and genuinely working on the requests and concerned about properly responding to Plaintiff. There was no willful or knowing violation of OPRA by the BID or Ms. Colon.

In short, to impose a penalty on Ms. Colon after her dedicated and genuine efforts to respond to these OPRA Requests while facing extraordinary and unprecedented circumstances would be unjust and unconscionable. She executed her duties as a public servant faithfully and diligently as the difficult circumstances permitted with every intention to comply with OPRA. There was no violation of OPRA and certainly no “knowing or willful” violation.

G. As to the Common Law Claim/Right of Access.

The Second Count in each of the Plaintiff’s Verified Complaints in these consolidated matters sought alternative relief and remedy under the common law right of access. Unquestionably, the common law right of access remains a basis upon which to access public records separate and distinct from OPRA. Bergen Cty. Improvement Authority v. N. Jersey Media Group, 370 N.J. Super. 504, 516 (App. Div. 2004).

Under the common law, a public record is “one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.” Nero v. Hyland, 76 N.J. 213 (1978) (alterations removed) (quoting Josefowicz v. Porter, 32 N.J. Super. 585, 591 (App. Div. 1954).

Thus, to receive access to a public record under the common law: (1) the record requested must be a common-law public document; “(2) a person seeking access must establish an interest in the subject matter of the material,” Keddie v. Rutgers, 148 N.J. 36 50 (1997) (quoting S. Jersey Publishing Co. v. N.J. Expressway Authority, 124 N.J. 478, 487 (1991); and “(3) the citizen’s right to access must be balanced against the State’s interest in preventing disclosure,” ibid. (quoting Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46 (1995).

Like OPRA, when confidentiality concerns are raised under the common law right of access, courts balance the requestor’s interest in disclosure against the government’s interest in confidentiality. Loigman v. Kimmelman, 102 N.J. 98, 108 (1986). “[T]he relative interests of the parties in relation to the specific materials in question” must be the center of the balancing process. Piniero v. N.J. Div. of State Police, 404 N.J. Super. 194, 206-07 (App. Div. 2008) (citing McClain v. Coll. Hosp., 99 N.J. Super. 346, 361 (1985)). When there is a confidentiality claim, the “applicant’s interest in disclosure is more closely scrutinized.” Keddie, 148 N.J., supra, at 51. With this in mind, courts consider whether the confidentiality claim is “premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest.” Loigman, 102 N.J., supra, at 112. Along with the requestor’s motivation, Loigman, supra, identifies six (6) factors that must be balanced in order to determine whether to disclose:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
- (3) the extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure;
- (4) the degree to which the information sought includes factual data as opposed to evaluative reports or policymakers;
- (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures institute by the investigative agency; and
- (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual’s asserted need for the materials. Against these and any other factors should be balanced the importance of the information sought to the plaintiff’s vindication of the public interest.

Loigman, 102 N.J., supra, at 104. See also Matter of the New Jersey Firemen's Association Obligation to Provide Relief Applications under the Open Public Records Act, supra.

Here, while the BID is not a “public entity” *per se*, there is no question that it is a private, Title 15 non-profit corporation with some public attributes and thus subject to OPRA. It is undisputed that the records sought in the Plaintiff's OPRA requests were “public records” located in the BID District. At issue with respect to the Plaintiff's First OPRA Request was if and whether the BID's responses to that request constituted a “denial” or could be “deemed deni[als]” of Plaintiff's access to the requested documents. The Court has already determined that they were not; that the requests were overbroad, ambiguous and invalid; that the documents nevertheless produced were appropriately provided with redactions of the home addresses, personal emails and unlisted phone numbers of BID members; and, therefore, that the BID specifically and properly responded to the May 12, 2020 OPRA Request Nos. 6, 26, 27, 28, and 29.

On the latter score, especially with respect to the production made of documents in redacted form, it appears that only the first, second and (arguably) third of the Loigman factors (underscored thusly above) are applicable to the balancing process required by the Court. As described by Ms. Lebron in her unrefuted Certification, BID volunteers – of which she was one - did not reasonably expect their home addresses, telephone numbers and email addresses would be publicly disclosed. As she noted, this is why BID volunteers provided only their business contact information. Because the BID Board members are volunteers, and not government officials, they do have a reasonable expectation of privacy that they will not be harassed, especially with regard to Plaintiff. Importantly, the motivation of the Plaintiff's principal, Jeremy Baratta, as evinced in the emails he wrote and exchanged with Ms Colon most certainly factored into the equation of balancing the relevant Loigman factors – one that was suspect and tainted by the overtly threatening tone of the emails he sent to Ms. Colon (with copy to members of the governing body, and even the media) that were laced with vitriol and evidently intended to impugn Ms. Colon's integrity and character.

As the Court noted earlier, Plaintiff itself, through Mr. Baratta's harassing emails to Ms. Colon and conduct that is the subject of public record here, created and fomented a real-world implication and sense of harm that could foreseeably eventuate from disclosing personal home addresses for BID volunteers; and thus, triggered a commensurate need by the BID to redact personal information like that sought to protect the privacy of its individual, volunteer Board members. In balancing the requestor's interest in disclosure against the BID's interest in confidentiality, to compel disclosure of such legitimate, private information would most certainly tend to “chill” the BID's “self-evaluation, program improvement, or other decision-making”, as well as “impede agency functions by discouraging citizens from providing information to the government” or, in this case, from even volunteering to serve on the BID Board.

Thus, after applying the Loigman factors and for all of the same reasons that the Court has heretofore rejected the Plaintiff's claimed OPRA violations, there is no actionable alternative claim under the common law right of access with respect to the First OPRA Request, nor is there basis

for an award of attorneys' fees on the common law claims with respect to both the First OPRA Request and the Second OPRA Request.¹³

As to the Second OPRA Request emailed to the BID on June 29, 2020, Ms. Colon emailed her response to the Plaintiff's principal on July 10, 2020. As the Court previously found, with respect to every item requested in the Second OPRA Request, Colon either provided responsive documents or advised that no responsive documents existed. In contrast to the First OPRA Request, in which Plaintiff challenged redactions and the withholding of records, Plaintiff has not asserted that Ms. Colon's production of records has been deficient. Accordingly, with respect to the Second OPRA Request, Plaintiff's alternative claim seeking relief under the common law right of access was and is moot and does not merit any further discussion.

VI. Conclusion & Decision.

For each of the foregoing reasons, then, after applying the standards applicable to the evidence presented in the record of these consolidated OPRA matters to the specific claims for relief asserted, the Court concludes that:

1. The pleadings, affidavits and evidence presented in the record show palpably that there is no genuine issue as to any material fact, and

2. The evidence is so "one-sided" in favor of the Defendants that they are entitled to the entry of judgment as matters of both fact and of law, and in the interest of justice. Accordingly, judgment will be entered in their favor, as follows:

- The relief sought by the Plaintiff under OPRA and the common law in the Verified Complaint filed in Dkt. No. MID-L-4356-20 shall be **DENIED** in its entirety.

- The relief sought by the Plaintiff under OPRA and the common law in the Verified Complaint filed in Dkt. No. MID-L-4548-20 shall be **DENIED** in its entirety.

- The Defendants' Cross-Motion to dismiss the Plaintiff's Verified Complaint in Dkt. No. MID-L-4356-20 pursuant to R. 4:6-2(e) shall be **GRANTED**, and that judgment shall be entered pursuant to R. 4:67-5 in favor of the Defendants **DISMISSING** the Verified Complaint in that action, with prejudice, but without costs; and that

- The Defendants' Cross-Motion to dismiss the Plaintiff's Verified Complaint in Dkt. No. MID-L-4548-20 pursuant to R. 4:6-2(e) shall be **GRANTED**, and that judgment be entered pursuant to R. 4:67-5 in favor of the Defendants **DISMISSING** the Verified Complaint in that action, with prejudice, but without costs.

¹³ As the Supreme Court in Mason has stated, attorneys' fees are available to a party who succeeds on an OPRA claim, and that "[a]bsent an apparent, theoretical basis for such a distinction, we conclude that the catalyst theory applies to common lawsuits as well." 196 N.J., supra, at 79. Since the Court here has rejected the Plaintiff's requests for attorneys' fees on its OPRA claims under the "catalyst theory" (pp. 33-35, supra), so, too, for those very same reasons does the Court reject such a request under the common law claims.

An Order for Judgment implementing the Court's decisions on each of the respective applications of the Plaintiff and cross-motions of the Defendants accompanies this Opinion.

SHARE:

[Join Our Email List](#)



SEE WHAT'S GOING ON IN OUR DOWNTOWN AREA!

Our downtown area has recently made a few upgrades to public space, some of which include our new tree plantings, installation of tree wells and curb cutouts, and the expansion of the "Morning Glory" Mural!

Learn more about them below!

Installing New Trees . . .

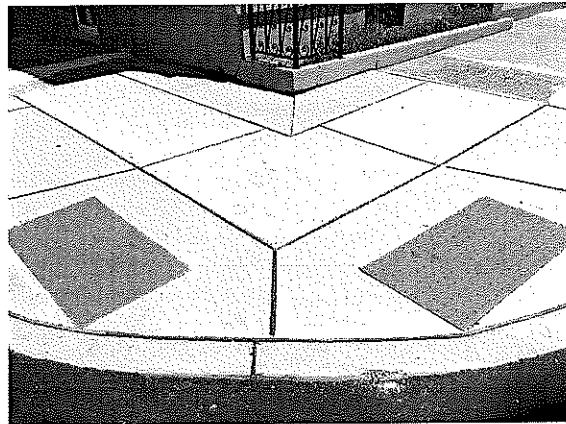
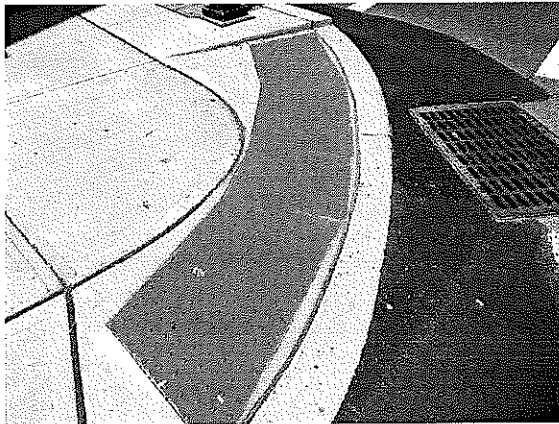
The City is in the process of replacing the trees and tree grates in various locations on Smith St. These improvements aim to reduce walking hazards and improve the aesthetic of our downtown area.





Improving Accessibility . . .

The curb cutouts allow for easier movement from the sidewalk to the street and improve overall accessibility for the general public.





Beautifying our Downtown Area. . .

The "Morning Glory" mural project was first unveiled in Fall 2020 as a symbol for the resiliency of the people of Perth Amboy. It has now been expanded to cover the entire sidewall on 86 Smith St.



PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT
732-442-6421
Webpage

Connect with us



PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT

City Hall
260 High Street
Perth Amboy, NJ 08861
(732) 442-6421



Barry Rosengarten, Chairman

September 7, 2021

Victor Tavarez, Program Director
Gateway Neighborhood Collaborative
P.A.R.T.N.E.R
415 Fayette Street
Perth Amboy, NJ 08861

Dear Victor,

I am writing you to propose a partnership with the Gateway Neighborhood Collaborative on a promotions campaign for businesses in your area. The Perth Amboy Eats Initiative was created during the COVID-19 pandemic aimed to support local restaurants and eateries. The online platform highlights various food establishments and promotes contactless ordering for the safety of customers and employees, alike.

I have enclosed a brief proposal that presents the initiative, examples of webpage layout, information on marketing agency for this specific project and the contribution request. I believe the GNC's added support would truly benefit our local establishments by expanding inclusion and providing greater avenues of business promotion and continued safety in our downtown district.

Should you have any questions, please feel free to email me at: ncolon@perthamboynj.org or call me directly, (732) 442-6421.

Sincerely,

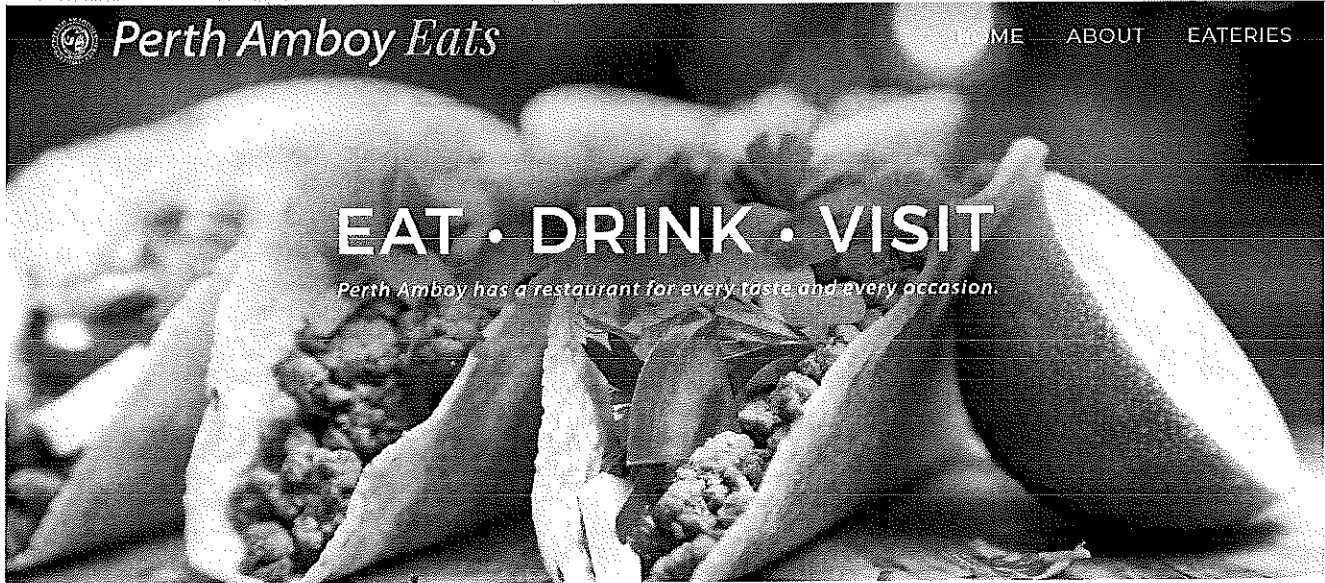
Noelia Colon, Executive Director
Business Improvement District

cc: *Barry Rosengarten, BID Chairman*
Tashi Vazquez, Assistant Director of OECD
File

Perth Amboy Eats



Home page image of www.PerthAmboyEats.com



Initiative

Perth Amboy Eats is an initiative created to serve as an online promotional tool for restaurants and eateries. The City of Perth Amboy received funding from the New Jersey Department of Community Affairs to promote the continued recovery and revitalization of Neighborhood Preservation Program (NPP) communities in the wake of the COVID-19 crisis. The project initially launched in the Neighborhood Preservation Program (NPP) sector of the Business Improvement District (BID) is seeking support to expand in order to continue promoting safety through the use of QR codes for contactless ordering.

Program Features

Perth Amboy Eats brings visitors and residents to a centralized location to learn more about our local restaurants and eateries. Website visitors can access the menu and view photos of the food and establishment, providing insight into the type of cuisine each location offers. Each restaurant will be provided with printed cards and stickers displaying their contact info and QR code to place on tabletops, serving counters and windows.



Alma
Lounge

462 Amboy Avenue | Perth Amboy, NJ 08861 | 732.954.2305
PerthAmboyEats.com/AlmaLounge

Scan the QR code for a contactless menu.
Escanea el código QR para un menú sin contacto.



Webpage Functions

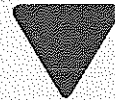
The City of Perth Amboy and BID selected Key Marketing as a vendor for the development of the Perth Amboy Eats page. Key Marketing (www.key.marketing) will coordinate a visit with each business, gather content to develop the business' webpage and produce:

- Photos of the storefront & the inside of the establishment
- Confirm contact details
- Photos of any menu items they would like featured, and
- Create webpage of business establishment, with review, edits and approval by the business owner.

See the webpage sample below or visit www.perthamboyeats.com to see the live page. Hosting services for the Perth Amboy Eats website are managed and paid by the City of Perth Amboy.

Webpage Example: Fu Lin Chinese Restaurant

VIEW AND CONNECT WITH US (LINKS BELOW)



CALL RESTAURANT

GET DIRECTIONS

VIEW MENU

LOCATION

▶

ADDRESS

79 Smith Street
Perth Amboy, NJ 08861

CONTACT INFO

▶

PHONE

732 826-9050
732 826-9060

LET'S STAY CONNECTED

HOURS OF OPERATION

▶

OPEN 7 DAYS A WEEK

Monday-Thursday 11AM-11PM
Friday-Saturday 11AM-12AM
Sunday 12PM-11PM

ORDERING OPTIONS

▶

DINE ✓

TAKEOUT ✓

DELIVERY ✓

ONLINE ORDERING

▶



OUTREACH: Join Perth Amboy Eats



Food establishments that are interested in being added to the website may fill out a form by using the QR code (left) or by using the link below. Applicants will then be contacted to discuss further details about the program.

<https://www.cognitoforms.com/BusinessImprovementDistrict1/PerthAmboyEatsInterestForm>

Partners

- Office of Economic and Community Development/Neighborhood Preservation Program
- Perth Amboy Business Improvement District
- Perth Amboy Alliance for Community



Contribution Request

The website currently features 30 food establishments and we are seeking your support for expansion. The GNC area hosts a number of eateries, and we want to be sure they are participating in this initiative. Key Marketing prepared each personalized webpage for \$1,000, as detailed on page 2 of this proposal. We are requesting a contribution amount of \$10,000, for the inclusion of 10 food establishments. This would cover the full expense for the businesses, allowing them to participate at no cost. Please note that this will be made payable directly to Key Marketing and we will work collaboratively to ensure that the images and content are to the satisfaction of the GNC and the business owner.

Historic City of Perth Amboy

Perth Amboy, an urban community with a rich cultural history and a more than 300 year old maritime and industrial legacy. The City comprises a land area of 4.55 square miles with a population of 50,814 according to the 2010 Census.

City Hall

260 High Street, Perth Amboy, NJ 08861

Open Map

Phone: (732) 826-0290

Hours: Mon-Fri 9:00 A.M-5:00 P.M

Resources

- Join Perth Amboy Eats
- Perth Amboy Notable Landmarks
- Business Improvement District
- City of Perth Amboy
- PAAC
- NPP

A link to GNC's organizational information would be included in our resources section and your logo will be added to the site, as a partner.

Contact Us

Perth Amboy Business Improvement District

732-442-6421

ncolon@perthamboynj.org

Office of Economic and Community Development

(732) 826-0290 ext. 4863

tvazquez@perthamboynj.org

QUOTATION



10-Bike Pay-Per-Use (Rental) System with Single Speed Bicycles

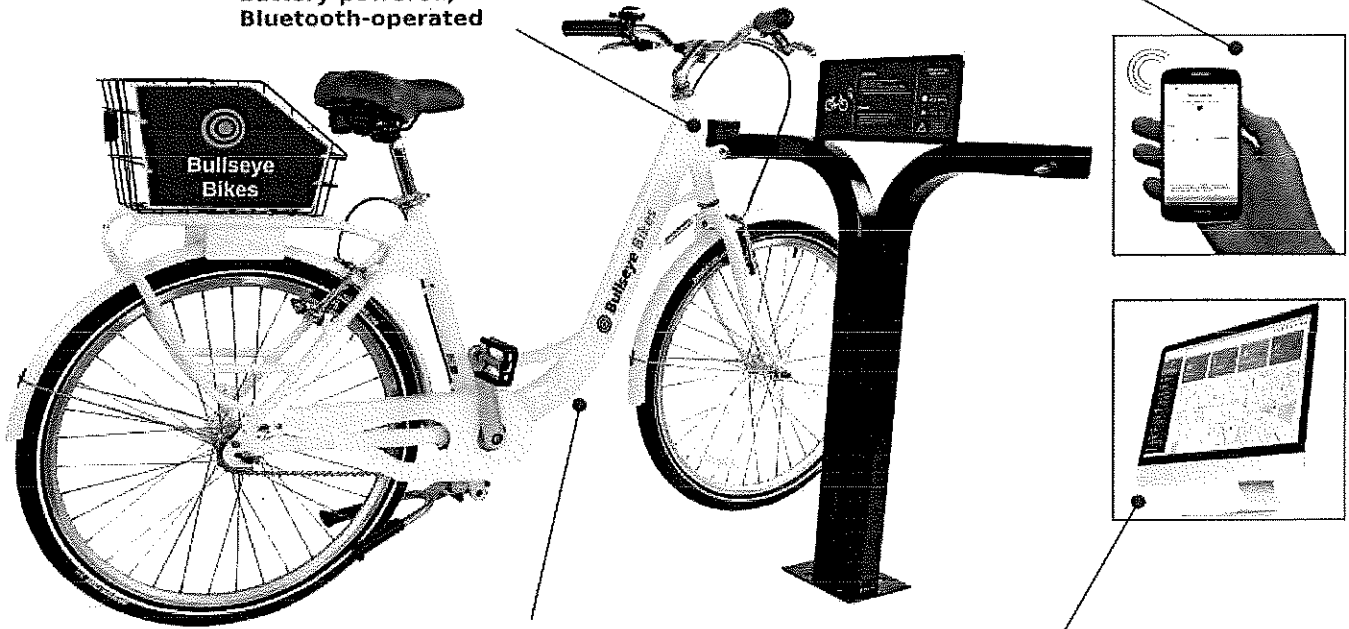
Quotation #: 00931		Quotation Date : September 8, 2021		
FOR: Rachel Jones Finn Alley Fishing Ship to 99835		FROM: Dynamic Bicycles, Inc. 461 Main St, Suite C200 Pawtucket, RI 02860		
Terms*	Ship Via	Sales Rep	F.O.B.	Project/Property
50% Dep/50% Net 30	Freight	Patrick	Destination	On Bike Share System
On Bike Share System Components				Price USD\$
Qty 10 x Single Speed Custom-Branded Bicycles <i>Bicycle Features Include :</i> <ul style="list-style-type: none"> 6061 Aluminum step-thru frame (Frame color: White), Single speed gearing, Tektro V-brakes, Brown leather seat with matching grips, 26 x 1.75" puncture-resistant tires, double leg kickstand, bell <i>Branding Includes :</i> <ul style="list-style-type: none"> Bikes branded with customer logo and fleet numbers Rear carrier top panel with customer logo; printed on 4-color styrene panel 				\$10,350
Qty 10 x Bluetooth Electronic Locks <ul style="list-style-type: none"> Battery powered, weather resistant design, mounted with tamper-proof hardware 				
Qty 10 x Individual Docking Racks in Black (1 bike per rack) <ul style="list-style-type: none"> Powder coated steel with concrete mounting hardware Racks branded with customer logo and rider instructions 				
Movatic Rider App for iOS and Android (unlimited free App downloads) Movatic Administration Software <ul style="list-style-type: none"> Access control, real-time monitoring, rider management, and rental fee collection Includes cloud-based hosting, phone support, software updates First year annual software licensing included. Annual software license renewal fees of \$100 per bike, assessed by Movatic** 				
System Configuration - Setup and customization of Admin software				INCLUDED
On-Line Training on Admin software and App				INCLUDED
Bicycle Upgrades and System Accessories				
Custom-Painted fenders/chainguard - color matched to logo (\$100/bike)			NO	
OnLock - Integrated U-lock for securing bike away from racks (\$30/bike)			NO	
OnLight - Safety lights, magnetically powered, front/rear set, (\$50/bike)			NO	
Fender Set - Full coverage front/rear fenders, color match to frame (\$30/bike)			NO	
Rear Basket - Includes branded side panels with customer logo (\$30/bike)			NO	
Outdoor Tire Pump - Stainless, all-weather, w/mounting hardware (\$170)			NO	
Optional On-Site Services				
On-Site Bike Assembly (\$60/bike)			NO	\$3,330
9-month Bike Maintenance Program (\$333/bike/year), First Year			YES	
12-month Bike Maintenance Program (\$396/bike/year), First Year			NO	
Shipping by Freight Carrier				\$850
TOTAL SYSTEM COST				\$14,530
*Payment Terms: 50% Deposit to Confirm Order; Balance Due Net 30 Days from Shipping. Quote valid for 60 days. Payment of deposit indicates acceptance of payment terms. **Read attached Software License regarding Recurring Fees.				

QUOTATION

On Bike Share Single Speed System

Bicycles are 'docked' to the racks using a battery powered, Bluetooth-operated

Riders download a free App to checkout and return bikes

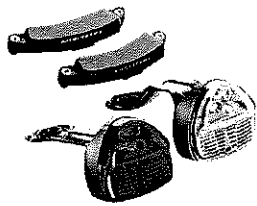


Bicycles are fun, stylish and come branded with your logo

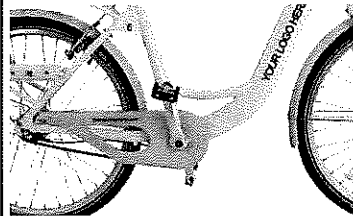
Admin software controls bike access, tracks activity in real-time, and collects rider

Accessories and Upgrades

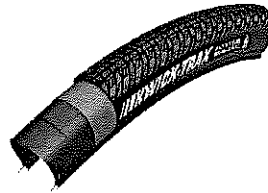
Safety Light Kit



Painted Fenders/Chainguard



Puncture-Resistant Tires



Outdoor Bike Tire Pump



Dynamic Bicycles Limited Warranty

Bicycles, racks and electronic locks come with one-year warranty against manufacturing defects or workmanship, limited solely to the repair or replacement of original parts. Warranty claims must be made directly to Dynamic Bicycles, Inc. Dynamic reserves the right to request the return of parts claimed under warranty. Warranty does not cover vandalism, theft, damage from accidents, normal wear and tear, neglect, misuse, or failure due to improper assembly, installation or maintenance. Bicycle warranty is void if bicycle is modified or used in a manner or purpose other than its original design. Electronic lock warranty is void if locks are left outside during winter, submerged in water, vandalized, or improperly maintained. Warranty does not include shipping costs. Claim requests can be submitted by email to info@onbikeshare.com or by calling 401-475-8094.

Software License



Limited Lifetime Software License

1. License Use. Dynamic grants customer ("Customer") a non-exclusive, non-transferrable license ("License") to access the software platform ("Software") including App and Administrative software for use with On Bike Share system ("System"). This License includes hosting of the Administrative software, Administrative logins for the Admin site, free unlimited downloads of the App through the Apple Store (iOS) and Google Play Store (Android), as well as all updates and upgrades to the Software during License use. Software Licenses are issued per Electronic Lock ("Licensed Device"). This License is limited to use only with Licensed Devices included with the System, and cannot be used to control or access any other equipment or devices, and is limited to the life of the Licensed Device. Any new or replacement Licensed Devices purchased for use in the System will require license activation fees. You may not and you agree not to, or to enable others to, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works from the App, Admin software or connectivity between Software and Licensed Devices.

2. Fees Collected. For Customers who charge and collect rental fees through the Software, annual license renewal fees will equal \$100 per Licensed Device, assessed by Movatic. Software will assess credit card handling fees to cover collections, settlement, transaction security, and software maintenance. Fees include a percentage of credit card collections that are set and collected by Stripe (currently 2.9% plus \$0.30 per transaction), plus 3.1% to Movatic for Stripe integration with Software, hosting, support, upgrades and incident resolution. The net amount of credit card transactions for rider fees collected will be deposited into the designated bank account entered into Software by Customer.

3. Covered Software Versions. App users are encouraged to keep up-to-date with App updates in order to ensure the best possible experience with the bike share system.

4. Excluded Services. Excluded from the coverage of this Software License are interruptions in service resulting from misuse or misconfiguration of the Software by Customer, or any accident or other cause external to the Software, including but not limited to problems related to internet interruption, Data Center interruption, Customer's network, information/security breach, credit card processing or settlement delays or interruptions, or other similar causes.

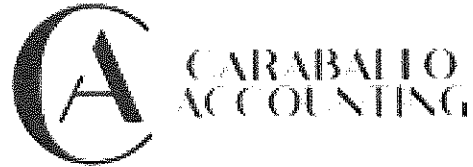
5. Termination. If Customer breaches any a material terms of this Software License and does not remedy the breach within twenty (20) days upon of written notification to Customer of such breach, Dynamic reserves the right to terminate Customer access to Software and the System.

6. Software Warranty. On Bike Share and Movatic warrant that the Software will be maintained and supported in accordance with industry standards, and makes no other warranty, express or implied, with respect to the Software and license, including but not limited to any implied warranty of merchantability or fitness for a particular purpose or any other warranty of any kind for any services performed hereunder or any materials furnished hereunder.

7. Limitation of Liability. The cumulative liability of Dynamic to Customer for all claims arising under or related to this Software License, whether in contract, tort or otherwise, shall not exceed the original Software License fees paid to Dynamic with the original purchase in the amount of \$100 per Licensed Device. In no event will Dynamic be liable to Customer or their bike share program users for damages for loss of data, lost profits, breach of customer or user information, or other indirect, special, incidental or consequential damages arising from use of the Software or bicycle, even if Dynamic has been advised of the possibility of such damages, or for any claims by any third party. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the effectiveness of other remedies.

8. Indemnification. Dynamic warrants that it has the right all necessary permissions to license the Software, and the use of the Software by Customer in accordance with the terms of this Agreement shall not infringe the copyright of any third party. Dynamic and Movatic shall indemnify and hold Customer harmless from any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Software by the Customer in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement.

9. **Dispute Resolution.** Customer agrees to arbitrate – rather than litigate in court – any and all claims, disputes, or controversies between Customer and Dynamic or Movatic, including any parents, subsidiaries, affiliates, officers, directors, employees, or agents of Dynamic or Movatic, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort) or other legal or equitable theory ("Dispute") that arise out of or in any way relate to Customer's use of On Bike Share System or Software, or any of the Services or products provided to Customer. All such dispute resolutions shall be subject to the laws of the state of Rhode Island, and jurisdiction shall be in Providence County, Rhode Island.



Prepared for:

Noelia Colon
BID/UEZ Executive Director
City of Perth Amboy
Business Improvement District
Perth Amboy, NJ, 07201
(732) 442-6421
ncolon@perthamboynj.org

Prepared by:

Giselle Marmolejos
Managing Director
Caraballo Accounting inc.
20 Commerce Dr Suite 135
Cranford, NJ 07016
201-351-8855
Contact@caraballoaccounting.com

Noelia Colon,

Thank you for taking the time to reach out to us. We understand your needs and how you are looking forward to helping the community. I am pleased to propose a solution that will educate business owners and help them grow their businesses.

Caraballo Accounting has over ten years of experience offering services like Accounting, Bookkeeping, Tax Preparations, Payroll, Human Recourses, Advisory & Training in different areas for both the owners and the employee. We work with various organizations, non and for-profits, and governmental offices to help create, develop projects, and educational training workshops in English & Spanish for Minority businesses.

We pride ourselves on providing our clients with a professional service, guaranteed accuracy, and the highest level of confidentiality.

Your attached cost summary is based on your current needs and can be adjusted to customize your services.

I look forward to discussing your project with you in more detail shortly. Please contact us for any additional questions or requests.

Sincerely,

Franklin Caraballo

Managing Director
Caraballo Accounting

Giselle Marmolejos

Managing Director
Caraballo Accounting



Meet Our Team:



Franklin Caraballo, Managing Director of Caraballo Accounting, located in Cranford, NJ, has over 15 years of experience within the Business, Accounting, and auditing field. Caraballo is a current a member of the Massachusetts Association of Accountants and holds a bachelor's degree in Business Administration in Accounting and Auditing & a master's degree in Business Administration in Human Resources. Caraballo also have many Certifications as Certificate of Financial Facilitator & Training Methodology Based on Labor Competency Standards, by The National Institute of Professional Technical Training (INFOTEP) ISO 9001. Within the past years, Caraballo has developed projects in financial audits and accounting with firms such as Crowe Horwath and BDO, both Top 20 Accounting Firms in the US.



Giselle Marmolejos, Managing Director of Caraballo Accounting, located in Cranford, NJ, has over 10 years of experience working with the minority community within Business operation & governmental relation. Marmolejos holds a bachelor's degree in Business Administration in Global Business from Rutgers Business School and within the past years, has worked and developed projects with Hudson County Small Business Development Center, The Statewide Hispanic Chamber of commerce, Saving Latin America and many other business entities, organization, and non-profits.



Prepared for:

Noelia Colon
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Prepared by:

Giselle Marmolejos
Managing Director
Caraballo Accounting inc.
20 Commerce Dr Suite 135
Cranford, NJ 07016
201-351-8855
Contact@caraballoaccounting.com

Date: September 12, 2021

Proposal Subject: 1 hour - Business Administration Webinar in both English & Spanish

Summary of Responsibilities:

- Different types of business Entities Formation and their importance
- Employment Management
- Financial Statements – Balance Sheet & Profit Statement
- Tax Report (State & Federal)

Services Total Cost: USD \$800.00

This sets forth the entire agreement between BUSINESS IMPROVEMENT DISTRICT and CARABALLO ACCOUNTING INC. None of the terms within this business contract shall be amended, except in writing and signed by both parties

Noelia Colon
BID/UEZ Executive Director

Giselle Marmolejos
Managing Director – Caraballo Accounting inc.

This Business Proposal expires September 24th, 2021. If more time is needed, please contact our office at (201) 351-8855 or by email Contact@caraballoaccounting.com
WWW.CARABALLOACCOUNTING.COM

SHARE

August 11, 2021

3 minute read

NJEDA BOARD APPROVES MAIN STREET RECOVERY PROGRAM RULES

TRENTON, N.J. (August 11, 2021) – The New Jersey Economic Development Authority (NJEDA) Board today approved rules for the Main Street Recovery Program. Created under the Economic Recovery Act of 2020 (ERA), the Main Street Recovery Program is a \$100 million small business support program that will fund multiple financial assistance products aimed at supporting the growth and success of small businesses in New Jersey. More information is available at <https://www.njeda.com/main-street-recovery-fund/>.

“Supporting small businesses is the centerpiece of Governor Phil Murphy’s plan for a stronger, fairer recovery from the COVID-19 pandemic,” said NJEDA Chief Executive Officer Tim Sullivan. “The Main Street Recovery Program approved today will build on the NJEDA’s successful COVID-19 relief programs to provide new resources tailored specifically to help business owners recover from the impacts of the pandemic and prepare for long-term success.”

The rules approved today create two grant products funded by the Main Street Recovery Program: the Small Business Lease Assistance Grant and the Small Business Improvement Grant.

The **Small Business Lease Assistance Grant** is a \$10 million program that will provide grants to businesses entering new or amended leases with at least five-year terms that include at least 250 square feet of street-level space. This grant funding will offset a portion of annual lease payments for two years.

The **Small Business Improvement Grant** is a \$15 million program that will provide grants up to \$50,000 to reimburse businesses for a portion of costs associated with improvements and/or the purchase or installation of furniture, fixtures, and equipment since March 9, 2020.

Applications for these programs are currently under development. The NJEDA will announce the application timeline for both programs soon.

In addition to the Small Business Lease Assistance Grant and the Small Business Improvement Grant, the NJEDA intends to pilot additional products to be funded through the Main Street Recovery Program. The Authority anticipates these pilot programs will include financing to help microbusiness lenders provide more low-cost loans and technical assistance for microbusinesses and an expansion of the NJEDA's existing Micro Business Loan Program through which the Authority will provide low-cost financing directly to eligible microbusinesses.

In line with Governor Murphy's commitment to a stronger, fairer recovery from the COVID-19 pandemic, 40 percent of all Main Street Recovery Program funds are reserved for businesses located in census tracts that were eligible to be designated as Opportunity Zones. Providing dedicated funding for these census tracts helps to ensure equitable access to resources for communities and businesses that have historically struggled to access resources.

The Main Street Recovery Program is part of a suite of programs created or expanded under the ERA that includes tax credits to incentivize job creation, new construction, and revitalization of brownfields and historic properties; financial resources for small businesses; support for new supermarkets and healthy food retailers in food desert communities; new funding opportunities for early-stage companies in New Jersey; and support for the growing film and digital media industry. The NJEDA will continue to engage the public as new programs and rules are developed.

About the New Jersey Economic Development Authority

The New Jersey Economic Development Authority (NJEDA) serves as the State's principal agency for driving economic growth. The NJEDA is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the NJEDA creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

To learn more about NJEDA resources for businesses call NJEDA Customer Care at 609-858-6767 or visit <https://www.njeda.com> and follow @NewJerseyEDA on Facebook, Twitter, Instagram, and LinkedIn.

###

RELATED CONTENT

PRESS RELEASE

September 14, 2021

NJEDA and PSEG Sign 78-Year Lease for the New Jersey Wind Port, Establishing New Jersey as a Hub for the Clean Energy Economy

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**WAS YOUR BUSINESS IMPACTED BY
TROPICAL STORM IDA???**

GRANT APPLICATION OPENS 9/17

\$1,000-\$5,000 Grants for Small Businesses & Non-Profits

NJEDA

ECONOMIC DEVELOPMENT AUTHORITY

The New Jersey Economic Development Authority (NJEDA) approved a \$10.5 million grant program to provide short-term, immediate rent and mortgage reimbursement support to New Jersey businesses and nonprofits that suffered physical damage from the effects of recent tropical storms Henri and Ida.

The program will provide small businesses and non-profit entities with up to 50 employees grants of \$1,000 to \$5,000. Landlords and home-based businesses are not eligible. Grants will be provided in the form of reimbursement of a business's August rent or mortgage payment.

To be eligible, a business or non-profit must:

- Provide certification of an unmet need due to damage and/or business interruption.
- Provide documentation of physical damage to the applicant's physical commercial location.
- Present a valid Employer Identification Number (EIN).
- Submit recent wage reporting form (WR30), if applicable.
- Be registered to do business in the State of New Jersey.
- Be in good standing with the Department of Taxation and DOL, and if applicable, the Division of Alcoholic Beverage Control, the Department of Children and Families, and/or the Department of Human Services.
- Complete an affidavit identifying all funding sources related to recovery from tropical storms Henri and Ida, including prior grants, insurance, and Small Business Administration loans and grants.
- Comply with any additional requirements that may apply.

The online application will be launched on Friday, September 17th at 9:00 a.m. Applications will be reviewed on a first come, first served basis.

To access the application on September 17th, please use the button below, then scroll down on the NJEDA page and click on "Henri/Ida Business Assistance Grant Program."

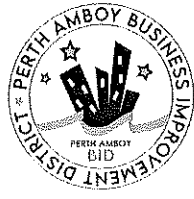
[LEARN MORE ABOUT GRANT HERE](#)

More Resources for Business Impacted by the Tropical Storm

For more resources for small businesses impacted by the Tropical Storm, please review the following link. The NJ Business Action Center will continue to update the list with more resources and guidance.

[REVIEW BUSINESS RESOURCES HERE](#)

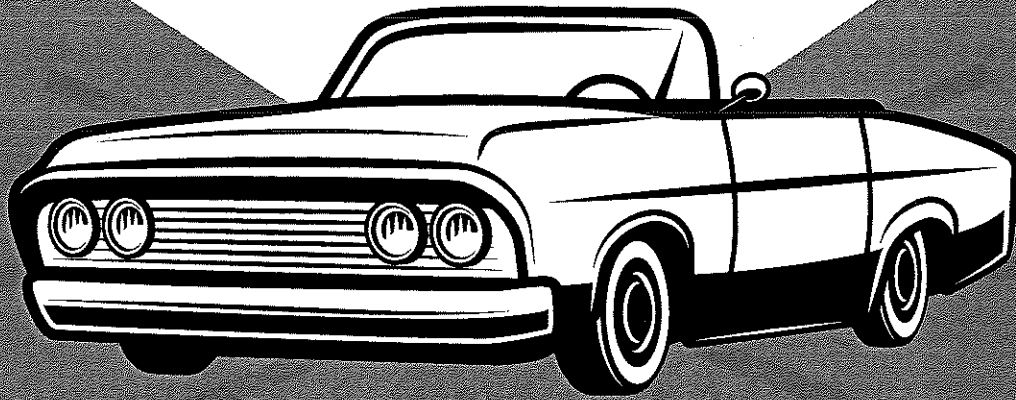




The City of
PERTH AMBOY
Helmin J. Caba, Honorable Mayor
& City Council Members

PERTH AMBOY BID & RARITAN BAY CRUSIERS PRESENT

PERTH AMBOY *Classic* CAR SHOW



SATURDAY, OCTOBER 23, 2021

**12 PM - 4 PM | City Hall Circle
260 High Street, Perth Amboy, NJ 08861**

FREE ADMISSION | TROPHIES | VENDORS

**RESOLUTION
BY THE BOARD OF DIRECTORS OF
DOWNTOWN PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT, INC. (BID)
AUTHORIZING EXECUTIVE CLOSED SESSION**

WHEREAS, on September 14, 2021, the Board of Directors of the Downtown Perth Amboy Business Improvement District, Inc. (“the BID” or “the Corporation”), a non-profit corporation, held a Public Meeting after duly notifying the public pursuant to and in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 (“the Act”);

WHEREAS, at said meeting, upon quorum being established, a motion was made pursuant to the Act to hold an executive “closed session” in order to discuss with BID counsel pending and closed litigation matters, which discussion is exempt from disclosure to the public under the Act;

WHEREAS, this Resolution is intended by the BID and its Board to memorialize the corporate action taken by the BID through its Board,

NOW, THEREFORE, it is hereby resolved on Tuesday, September 14, 2021, by the Board of Directors of the Downtown Perth Amboy Business Improvement District, Inc. as follows:

1. THAT at the September 14, 2021 meeting the BID Board of Directors shall conduct an executive “closed session” to discuss with BID counsel pending and closed litigation matters; and
2. THAT the Minutes of the September 14, 2021 meeting when issued and approved at the next BID Board meeting to be held in October 2021 shall summarize the closed session discussion.

ADOPTED this 14th of September 2021 at a duly noticed public meeting,

DOWNTOWN PERTH AMBOY BUSINESS IMPROVEMENT DISTRICT, INC.

Barry Rosengarten, Chairman

Antonio Abreu, Secretary

ATTEST to form:

Noelia Colon, BID Executive Director

September 14, 2021

VOTING:

Reso: No. R-06/09-21

First Name	Last Name	YES	NO	Abstain	Excused
Lisett	Lebron				
Reyes	Ortega				
Melvin	Rodriguez				
Samuel	Quezada				
Elizabeth	Sanchez				
Fausto	Diaz				
James G.	Snyder				
Sergio	Diaz				
Antonio	Abreu				
Asim	Malik				
Iris	Diaz				
Mayor Helmin	Caba				
Chairman Barry	Rosengarten				